QUARTERLY

No.

FOR JANUARY, FEBRUARY, AND MARCH.

1858.

NOTICE.

WITH reference to Government Order, dated the 27th May, 1857, No. 2783, *Quarterly* Numbers of Selected cases will in future be published.

REGULAR CASES.

JANUARY,

1858.

CASES

IN THE

NIZAMUT ADAWLUT.

VOL. VIII.

REGULAR CASES.

JANUARY 1858.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

Dacca.

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Case of RAMCHAND KAPALEE.

The prisoner in attempting to have forcible connection against her will with his wife, who had not arrived at years of puberty, stopped her mouth to prevent her cries, and caused her death by suffocation, convicted by the Court of culpable homicide and sentenced to imprisonment for ten years with labor in irons.

GOVERNMENT AND LUCKHEE KAUNTH KAPALEE *versus* RAMCHAND KAPALEE.

CRIME CHARGED.—Wilful murder, by forcibly having connection with his wife, a young girl, who had not arrived at puberty, and binding clothes over her mouth in order to effect his purpose, which proceedings caused her death.

Committing Officer.—Baboo Joychunder Gooho, Deputy Magistrate of Manickgunge.

Tried before Mr. R. Abercrombie, Officiating Sessions Judge of Dacca, on the 16th December, 1857.

Remarks by the Officiating Sessions Judge.—In this case there are no eye-witnesses to the facts, the crime having been committed during the night. The only proof of the prisoner's guilt beyond the fact of the girl's death and the deposition of the Civil Surgeon, consists in his confession before the Police, repeated in the presence of the Deputy Magistrate, which is to the following effect. The prisoner has been married to the deceased about four years, but she continued to reside at her father's house until the previous Monday, when the prisoner conveyed her to his own home. That night he remained away

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but on the following night he and his wife retired to rest together in the eastern house of his *barree*. He was anxious to consummate the marriage, but she steadily resisted all his endeavours and inducements, and as soon as he had fallen asleep, she slipped away, and went to sleep alongside of his grandmother, where she passed the night. On Wednesday (the night of the occurrence) the prisoner took his wife to his bed again, and endeavoured to persuade her to yield to his wishes, but she refused. Not being able to contain himself, he seized hold of her by the shoulders, and accomplished his purpose by force. On getting up he found she was dead. Being frightened at the consequences, he carried the body into the cow-shed, and tying a rope round the neck suspended it to the roof, with the hope of making it appear that she had committed suicide. The latter part of his confession is, however, contradicted by the evidence of his mother* and grandmother,† who state that they found the body of the girl lying on the prisoner's bed in the morning, when he related to them the circumstances stated above. There was no mark of a rope round the deceased's neck, and the little spot alluded to by the witnesses on the left side of the neck is not noticed by the Medical Officer in his deposition, nor do the witnesses confirm the statement made before the Deputy Magistrate that a cloth was found tied round the mouth of the girl. The existence of the rupture in the upper and lower *vagina* of deceased alluded to in the mofussil inquest is not confirmed in the doctor's evidence.

* Witness No. 8.

† Witness No. 7.

The Civil Surgeon in his deposition describes the result of his *post mortem* examination of the body, and states his opinion that the deceased died from suffocation, the result in all probability of the violence and smothering she was subjected to. He explains that by smothering he means the arresting of the breathing by violent pressure, such as the weight of the man's body upon her, and stopping her mouth to prevent her screaming. The only external marks found on the body were the swollen state of the features of the face, and the oozing of blood from the ears and nose, and these marks or signs, coupled with the history of the case, served to confirm the Medical Officer in his opinion that the girl had been smothered or suffocated while the prisoner was endeavouring to enforce his attempt to have connection with her.

At the sessions trial the prisoner admitted that he used force to effect his purpose of consummating the marriage, and when he had done so, he found that his wife was dead. He makes no defence and summons no witnesses.

In the absence on leave of the Mahomedan Law Officer attached to the court, I invited the Town Cazee to aid me at

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the trial. He acquits the prisoner of the charge of wilful murder, but pronounces him guilty of having forcibly had connection with the deceased, an immature girl, from the effects of which she died, and declares him liable to punishment by *akoobut*.

Of the guilt of the prisoner in causing the death of the deceased, there cannot be a doubt. It is asserted by all the witnesses that the girl was not old enough to permit consummation of the marriage, she not having arrived at the age of puberty. The prisoner himself admits that he forced her against her will to gratify his wishes, and that after the accomplishment of his object he found she was dead.

Although I consider the prisoner guilty of causing the death of the deceased, I cannot concur in the verdict of the Cazee, which appears to me somewhat opposed to the evidence of the Medical Officer, which sets forth that deceased died from suffocation, the probable result of the violence and smothering she was subjected to in the attempt to force her. I would convict the prisoner of the culpable homicide of Musst. Teertoo, an immature girl, by suffocation, while attempting to have forcible connection with her, and would recommend that he be imprisoned for a period of ten years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The Officiating Sessions Judge has, I think, in this case, which is one not unattended with difficulty, arrived at a correct conclusion. The unfortunate victim is almost a child wife, and the case exemplifies the evil consequence of an early marriage. The medical testimony shows that the deceased died from suffocation, and it is clear from the evidence that she must have met with her death at the hands of the prisoner. There is no proof that she died from rupture of the *vagina*, consequent on the violence used by the prisoner in his attempt to have connection with her against her will, and the only inference to be drawn from the facts as stated in evidence is, and it amounts to the strongest presumption, that he stopped her mouth in order to prevent her cries, while he was effecting his purpose, and that she died from the suffocation. I concur therefore, in convicting the prisoner of culpable homicide and sentence him, as recommended by the Sessions Judge, to be imprisoned for a period of ten years with labor in irons.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT

versus

MUNGLA PARAY (No. 3,) KHOLA PULLEE (No. 4,) AND BEHARRY DHANGUR (No. 5.)

Dinagepore.

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Case of MUNGLA PARAY and others.

One prisoner acquitted, the only evidence against him being that of an approver. Two others convicted as accomplices in the murder of the deceased, sentenced to transportation for life. Held that where an accomplice becomes approver, although, in some cases a legal conviction may take place upon his unsupported testimony, it is as a general rule very necessary for the ends of justice, especially where the life of another hangs on the issue, that his evidence receive some strong corroboration.

CRIME CHARGED.—1st count, wilful murder of Soodaram Thakoor; 2nd count, accomplice in the above crime.

Committing Officer.—Mr. E. Drummond, Officiating Magistrate of Dinagepore.

Tried before Mr. J. Grant, Sessions Judge of Dinagepore, on the 10th November, 1857.

Remarks by the Sessions Judge.—The prisoners are charged with the wilful murder of Soodaram Thakoor, on the night of the 4th of October, 1857. The witness "Nyan Pullee" No. 1, confessed to having been present when the murder was committed and was admitted as an approver. From his evidence and the confession of Khola Pullee prisoner No. 4, it appears that they and the deceased, who had been ill with fever for some days, all servants of Baboo Somboo Ram, were in the same apartment and that after midnight the prisoners Mungla Paray No. 3, and Beharry Dhangur No. 5, came and took the deceased, supporting him between them through the bazar, followed by the said "Nyan" and "Khola," to a bridge on the Gogra river and that on the deceased bending down to drink, the prisoner No. 3, Mungla Paray seized him by the back of the neck and held his head under water until he was dead and then fastened the body to a post of the bridge with a cloth. The body was discovered next morning and Baboo Somboo Ram had previously sent notice to the thannah that "Soodaram" was missing. The prisoner Mungla Paray No. 3, pleaded *not guilty* and the prisoners Khola Pullee No. 4 and Beharry Dhangur No. 5, confessed. In the confessions and evidence of Nyan Pullee and the confessions of Khola Pullee, there are some slight discrepancies and the confessions of Beharry Dhangur are incoherent; that it is very clear from them all, that the man was murdered under the bridge, and I believe the statement of the approver "Nyan" in the foujdary that the man was murdered by Mungla Paray No. 3, while the prisoner Beharry Dhangur No. 5, was close to him and the approver "Nyan" with the prisoner Khola Pullee No. 4, at a short distance, and that the said Mungla Paray and Beharry Dhangur then fastened the body to the post. This is supported by the evidence of the native Doctor who states that death was caused by suffocation in water, and the production of two 8 anna pieces by the approver "Nyan" which

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he said he had received for himself and Khola Pullee from Mungla Paray. The deceased was sick and having lately returned from Darjeeling, was supposed to have money. The prisoner Mungla Paray was *poojaree* of a *thakoorbarree* close to the window through which the deceased was taken out and had recently employed "Beharry Dhangur" to weed the flower garden. This *thakoorbarree* belonged partly to Baboo Somboo-ram who gave notice of the deceased being missing. The evidence of two *gooroojees* of the *thakoorbarree* for the prisoner Mungla Paray is unsatisfactory; that of one of them in the Sessions Court being directly contrary to what he stated in the foujdary. The approver "Nyan" and the prisoner "Khola" both gave their master notice of the deceased being missing, and the latter in his Sessions' confession states that he told his master of the murder, but that he only ordered notice to be sent to the thannah that the man was missing, I think it very improbable that "Nyan" and "Khola" should have murdered the man without assistance and the presence of Beharry Dhangur appears unaccountable, except as an accomplice of Mungla Paray, and I see no reason to doubt the evidence of the witness "Nyan" in respect to the prisoner "Mungla Paray" supported as is by the confessions of the other prisoners and the circumstances of the case. The *futwa* of the Law Officer acquits Mungla Paray and convicts the other prisoners as accomplices. I consider all the prisoners guilty and recommend that the prisoner "Mungla Paray" be sentenced to suffer death, the prisoner "Beharry Dhangur" to imprisonment for life beyond seas and the prisoner "Khola Pullee" to seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The Sessions Judge has found Mungla Paray guilty of the murder of the deceased, and recommends that he should be sentenced to suffer death.

With the exception of the testimony of the approver there is not one particle of evidence against him. The confessions of the other two prisoners, whatever amount of suspicion they may raise, are only legal evidence against themselves. Where an accomplice becomes an approver, although in some cases a legal conviction may take place upon his unsupported testimony, it is as a general rule very necessary for the ends of justice, especially where the life of another hangs on the issue, that his evidence receive some strong corroboration.

As in this case there is none, I acquit the prisoner Mungla Paray, and direct his immediate release. In concurrence with the Law Officer, I convict the other two prisoners as accomplices in the murder of the deceased, upon their own confessions and the evidence of the approver, and sentence them to transportation for life.

PRESENT:

J. H. PATTON, Esq., *Judge*, AND D. I. MONEY, Esq., *Officiating Judge*.

GOVERNMENT AND ANOTHER

versus

MOUNG-WOT-KAI.

Arracan.

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Case of MOUN-WOT-KAI.

The prisoner convicted by the lowercourt of the wilful murder of four persons, and wounding three others with intent to kill, was recommended to besentenced to imprisonment for life in banishment on the ground of his being "*a low animal*" or of a low order of intellect, in accordance with the precedent of this Court of the 30th September, 1856, in the case of Eshary Dassee. The Court held that it would be dangerous to allow degrees of insanity, to be the measure of the punishment;—that the criminal in every

CRIME CHARGED.—1st count, wilful murder of "Kra-oung," "Twour-pa-zai," "Thouk-ra-oung," and "Mee-mai-foo;" 2nd count, wounding with intent to kill, "Mee-pla-boo-kaing," "Mee-oung-froo," "Mee-oung-thai-mai," and "Mee-tso-ma-ree" on the 5th day of the waxing moon Tha-deng-zot 1219 M. S. corresponding with the 22nd of September, 1857.

Committing Officer.—Captain G. Faithfull, Principal Assistant of Akyab.

Tried before Major G. Verner, Officiating Commissioner of Arracan, on the 14th of November, 1857.

Remarks by the Officiating Commissioner.—The case was committed to the Sessions by Captain G. Faithfull, Principal Assistant to the Commissioner of Arracan at Akyab, on the 3rd November, 1857.

This is really a fearful case, the prisoner having run a "muck," he having killed on the spot two persons, wounded two others so severely, that they died in Hospital a few days after, besides which he wounded four others, one of whom died later from the effects of the wounds.

The prosecutor "Oo-gyan" stated that on reaching home, he there found his two daughters wounded, he took them to the Police pharee, where the prisoner had already been taken, and there he saw the dead bodies of his father "Kra-oung" and father-in-law "Twom-pa-yai" and four wounded persons, amongst whom was his mother "Mree-mai-fro," also his father's adopted son "Thouk-ra-oung" both of whom died in Hospital, his sister "Mee-tso-ma-ree," who has since died; and another sister "Mee-oung-froo" who, as also, his two daughters recovered from their wounds; the prisoner having killed, and caused the death of five, and wounded the other three persons. The prisoner "Moung-wot-kai" had resided with his (prosecutor's) father and mother, since he lost his wife. The prosecutor says he was a good man till then, that since last August, he had appeared not sane, but never quarrelled with any person, and not having been present, he could not say why he committed the crime.

The prisoner pleaded "*guilty*."

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This witness* says that hearing a noise she went out to see the cause, when suddenly she fell to the ground, not knowing at the moment she was wounded; saw the prisoner, with whom she had had no quarrel, *daw* in hand.

* Witness No. 1, Mee-oung-froo.

The witnesses† named in the margin, saw the prisoner with a *daw*, wound No. 1, witness "Mee-oung-froo," and they afterwards succeeded in apprehending him. No. 2 said, that for the last two months, the prisoner was silent, did not speak to any one, nor did he quarrel. No. 4 said he had not spoken much for a couple of months. Nos. 3 and 5 said they knew nothing of his being insane.

† Witness No. 2, Young-boon.
„ „ 3, Tsau-la-wan.
„ „ 4, Na-poo-yai.
„ „ 5, Na-too-kree.

This witness‡ stated that he saw the prisoner kill his father "Twom-pa-yan" by cutting him twice with a *daw*.

‡ No. 7, Then-kye-ai.

The depositions of "Thouk-ra-oung" and "Mai-froo" were both taken in Hospital, the day they were brought in, on the 23rd September, 1857. The former stated that the prisoner cut him over the mouth with a *daw*, and in three other places, he died on the 28th September. The latter stated that the prisoner lived with her and her husband, she had been out, returned home, all three were sitting, prisoner was working with a *daw*, basket making, he suddenly got up, and with one blow, with the *daw*, almost severed her husband's head from his body, after which, he cut her over the back, they had had no quarrel she said, and the prisoner had no reason for doing what he did. She said, he had been ailing for two or three months, was silly, nevertheless she said he did his work well, the same as others. She died on the 5th October.

This witness§ was present at the Police pharee, when the mohurrir examined the dead bodies and wounded persons, and when the prisoner voluntarily confessed to having killed and wounded the persons.

§ Witness No. 9, Na-yai.

This witness|| deposed to the death of the two persons, having been caused by the wounds they had received, to two of the wounded "Thouk-ra-oung" and Mee-nai-froo" having died in Hospital, from the effects of the wounds they had received, and to the wounds received by the others. Further he stated, that since the 23rd September, when he (prisoner) was admitted into Hospital, he had excellent opportunities of examining and watching the prisoner, that he had had no fits of insanity and he had every reason to consider him sane, though a low

|| Witness No. 10, Dr. Mountjoy.

such case must be either *out of his mind* and *wholly irresponsible*, or have had the power to resist the homicidal impulse, and did not, and is answerable for the consequences, and not considering *low intellect* to be a mental condition which gave the possessor invariably *less controul* over his actions than a higher degree of intellect, irrespective of moral feeling, and being of opinion, that the prisoner in this case, whatever his intellect was, had the power to controul the homicidal impulse, and did not because the indulgence of it gave him pleasure, sentenced him to suffer the extreme penalty of the law.

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animal, of morose disposition, that he had run a "muck" which Mughs, like Malays, frequently do.

The two witnesses* named in the margin stated that they were present when the prisoner voluntarily confessed to having killed and wounded his relations. The *daw* with which the wounds were inflicted was produced in Court, the blade of it, is about two feet long.

* No. 11, Ramzan Allee,
„ 12, Anoor Allee.

The prisoner "Moung-wot-kai" in his defence stated, that his confessions before the Police and Magistrate were voluntary.

In his confession to the Magistrate he said he was suddenly seized with a frenzy, when he first cut "Kra-oung" and his sister, that he then went out flourishing his sword, or *daw*, and wounded the others. The doing which, he said, gave him pleasure, he said he had been ailing and must have been mad.

From the evidence of the witnesses and the confession of the prisoner, there is no doubt, but that he is guilty of the crime he stands charged with. He caused the death of two persons on the spot, and wounded six others, of whom two died in Hospital, and one is said to have died since. There does not appear to have been any cause or quarrel for his having acted as he did. The Civil Surgeon deposed to having examined and watched him, since the 23rd September, when he was admitted into jail Hospital, (the day after the occurrence,) that he has shown no symptoms of insanity, and he considered him sane, but a low animal, of morose disposition. He answered questions put to him, unconnected with the case, quite rationally and does not look mad; neither from the evidence, does it appear, that there was anything particular the matter with him before he had become quiet, did not talk much, and his sister Mee-mai-froo deceased, said he did work the same as other persons, I therefore, not seeing any real grounds for considering that the prisoner was insane, convict him "Moung-wat-kai" of wilful murder, and wounding with intent to kill, and would recommend his being sentenced to suffer death, but in consideration of his being a "low animal," or of a low order of intellect, I recommend in accordance with the decision of the Sudder Court of Nizamut Adawlut, dated the 30th September, 1856, in the case of "Eshary Dassee," that capital punishment be remitted, and the prisoner be sentenced to imprisonment for life in banishment, with labor and in irons, and submit the case for the orders of the Sudder Court of Nizamut Adawlut.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and D. I. Money.)

Mr. D. I. Money.—The charges against the prisoner are clearly established upon the fullest and strongest evidence.

He has been found guilty of the wilful murder of four persons

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and of wounding as many more with intent to murder. The case is a horrible one. The prisoner ran a muck, as it is called, under the possession of something like a Satanic influence. He says himself he was seized with a frenzy, and the atrocious act gave him pleasure; that he had been ailing, and must have been mad.

There was no motive for the murders. He acted upon a sudden, and, from his own account, an irresistible impulse.

The case is rendered difficult by the opinion pronounced by the Civil Surgeon regarding the prisoner's mental condition. The medical evidence shows that the prisoner has evinced no symptoms of insanity since the fatal acts were committed. There is no evidence on the record to prove that he was insane before or at the time of their commission. The Civil Surgeon however considers him "a low animal" of morose disposition, and the Officiating Commissioner on the ground of his being *of a low order of intellect*, and with reference to the decision* of this Court of the 30th September, 1856, in the case of Eshary Dassee, recommends that the capital punishment should be remitted, and that the prisoner should be sentenced to imprisonment for life in banishment.

I cannot assent to this recommendation. There is no question, I admit, in the whole range of criminal jurisprudence more difficult to decide than the question of the responsibility, which attaches to the commission of a sudden and motiveless murder. In most cases, the Court is relieved from the difficulty

* *Remarks by the Nizamut Adawlut.*—(Messrs. J. S. Torrens and C. B. Trevor.) The act of murder in this case is confessed to by the prisoner, and so clearly established, that the only question left for our consideration is whether, as recommended by the Sessions Judge, the state of the prisoner's mind, at the time of the act, calls for any mitigation of punishment according to former practice of this Court, and should prevent capital sentence. It does not certainly appear from the evidence, which has been taken on the point, that the prisoner is actually insane. Her husband, in his statements from the first, deposes that she was in such a state of mind, especially from an illness, which she had shortly before the occurrence, as to be unconscious of her acts. The other witnesses, the neighbours and the chowkeedar, without going quite so far as the husband, depose to her having been at times "*behosh*" after the above illness; and all very distinctly state, that she was always in so stolid and imbecile a state of mind as to make them consider her to be foolish. The Civil Assistant Surgeon, without being able to testify as to any actual insanity, deposes to the prisoner's being of a very low order of intellect. Under all these circumstances, referring to the precedent of this Court in the case of Joary Chue Oung and Mounghoo, where the prisoner was found guilty of murder, but shewn to be of a low order of intellect, and sentenced only to imprisonment for life, and to other precedents in like cases, we think that the present case is one in which it would be unsafe to pass capital sentence; and it is accordingly ordered, that the prisoner be imprisoned for life in the Alipore jail with labor suitable to her sex.

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by the Medical evidence, but when such evidence shows, as the result of careful enquiry, that no symptoms of insanity have been traceable since the commission of the act, and leaves it to be inferred that the prisoner was sane, that is, conscious of right and wrong, and of the consequences of the act, when he committed it, while on the other hand there is the glaring insanity of the act itself, and the statement of the prosecutor that the prisoner was mad some years before, I confess it requires a most careful examination of the case, and the utmost caution in weighing the medical evidence, in order to arrive at a safe and just conclusion.

With reference, however, to the prisoner being "a low animal," or of a low order of intellect, it would, I think, be as dangerous as it would be unjust, in the consideration of such a question, to admit of degrees of insanity, and to allow the extent of the mental and moral consciousness to be the measure of the punishment. The criminal in every such case must be either *out of his mind*, and *wholly irresponsible*, or he had the power to resist the homicidal impulse, and did not, and is answerable for the consequences. The Court can admit of no middle ground in judging of the criminality of the act and the responsibility attached to it. In the *latter* case the prisoner would justly suffer the extreme penalty of the law, in the *former*, being irresponsible, he should be acquitted, and confined as a madman, until he is pronounced to be sane and it would be safe to let him loose.

From the well known case of Macnaughten tried in the house of Lords in 1843, Taylor in his work on Medical Jurisprudence (p. 854) deduces the inference, that a *complete* possession of reason is not held to be essential to constitute the legal responsibility of an offender; and a little further on, referring to Jameson's lectures on insanity, he states "that most lunatics have an abstract knowledge that right is right and wrong—wrong; but in true insanity the voluntary power to controul thought and actions is impaired, limited, or over-ruled by insane motives; a lunatic may have the power of *distinguishing* right from wrong, but it is contended, from a close observation of the insane, that he has not the power of *choosing* right from wrong; a criminal is punishable not merely because he has the power of distinguishing right from wrong, but because he voluntarily does the wrong, having the power to choose the right."

Was the prisoner in this case sufficiently sane to be criminally responsible?

There is no evidence to prove that he was mad. He was not suffering from any particular delusion of mind. In judging therefore of the crime, as the result of homicidal mania, it would be a dangerous doctrine, to judge only of the insanity

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of the prisoner, from the insanity of the act. Under this reasoning and upon such ground almost every crime might be palliated or excused. Absence of motive alone is not a safe criterion. There must be other evidences of insanity before a criminal can be pronounced irresponsible. See Taylor upon this point in his work cited above.

The sentence passed by this Court in the case cited by the Officiating Commissioner was *transportation for life* on the ground of the prisoner possessing *a low intellect*. The sentence now recommended is based upon this precedent. If I could be persuaded that *low intellect* was a mental condition, which gave the possessor invariably *less controul* over his actions than a higher degree of intellect, irrespective of moral feeling, I might come to the conclusion that he was necessarily *less responsible;* but still there would be *some* responsibility; and if *responsible at all*, the law must take its course. But as in judging of the act, I do not think the punishment should depend upon the degree of insanity, so also I would not allow the responsibility of the act to be affected by a higher or lower order of intellect.

I think the prisoner in this case, whatever his intellect was, had the power to controul the homicidal impulse, and as instead of resisting it he indulged it, because it gave him pleasure, he justly deserves the extreme penalty of the law. I would sentence him therefore, to suffer death.

Mr. J. H. Patton.—I have no hesitation in giving my assent to the death-sentence proposed to be passed on the prisoner. He has been guilty of four foul murders and as many more woundings with intent to kill, and all he pleads in defence is, that he was seized with an irresistible impulse to destroy life, and that the act gave him pleasure. That he knew what he was about, there can be no doubt, as otherwise he could not describe the sensations he felt in committing the deeds; and if with that knowledge he transgressed the highest command of God and man, he is unquestionably a fit subject for the infliction of the extreme penalty of the law. I would sentence him to be hanged.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT

versus

GOBIND CHUNDER MAJUMDAR (No. 19,*) DANISH SHEIKH (No. 10,) NUSSRUDDI (No. 11,) ARZAN MUNDLE (No. 12,) HACHIM (No. 13,) HURCHUNDER SHAHA ALIAS HURI SHAHA (No. 14,*) SOOKCHAND SHAHA (No. 15,*) PANAOOLLAH SHEIKH (No. 16,) BINUD MULLAH (No. 17,) HANI MAMOOD (No. 18,*) FAKEER MAHAMOOD CHOWKEEDAR (No. 19,) KHOSAL SHEIKH (No. 20,) KEFAITOOLLAH (No. 21,*) MADARI MOLLAH (No. 22,) TARIKOOLLAH (No. 23,*) NAMDAR (No. 24,*) MOKIM SIRDAR (No. 25,) JAMUL (No. 26,) BYCUNT KAPALI (No. 27,) GOBIND CHOWKEEDAR (No. 28,) KHODABUX BISWAS (No. 29,) MOLAMDHI KHALASI (No. 30.) JALAL SHEIKH (No. 31,*) MADARI CHOWKEEDAR (No. 32,) DOAD MULLICK (No. 33,) SEETARAM SINGH ALIAS HINDOO SINGH (No. 34,) SHUKUL TACOOR ALIAS HUNOOMAN SINGH (No. 35,) BURIAR SINGH (No 36,) PURUSHOOLLAH SHEIKH (No. 37,) MANICK SHEIKH KHALASI (No. 38,) JHUROO SHEIKH (No. 39,) MANICK SHEIKH (No. 40,) GOBURDHUN GHOSE (No. 41,) AND CHAMARI SHEIKH (No. 42)

Jessore.

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Case of DANISH SHEIKH and others.

Riotous attack upon the Indigo Factory of Muttrapore, attended with arson, the severe wounding of Mr. George Oram, and plunder of property. In consequence of Mr. Oram's having given a compromise in the case, in which, the Sessions Judge states, the Rajah of Nuldunga had, at first been implicated, the prosecution was conducted on the part of Government. Upon the defendants who were convicted of being foremost in the attack and most culpable, the Sessions Judge passed

CRIME CHARGED.—1st count, all the defendants are charged with committing a riotous attack upon the Indigo Factory of Muttrapore attended with arson, the severe wounding of Mr. George Oram and slight wounding of Ramnarayun Singh and others, the plunder of property valued at Rs. 308-9, belonging to the Gaud Ghaut concern and Rs. 405-4, belonging to Mr. George Oram and with resistance of the Police on the 4th of May, 1857, corresponding with the 23rd of Bysack, 1264, B. S.; 2nd count, all the defendants are charged with forcibly carrying away and illegally confining Mr. George Oram and the witnesses Nos. 2, 3, 4 and 5.

CRIME ESTABLISHED.—All the defendants are convicted on the 1st count, of committing a riotous attack upon the Indigo Factory of Muttrapore attended with arson, the severe wounding of Mr. George Oram and slight wounding of Ramnarayun Singh and others, the plunder of property valued at Rs. 308-9,

* Acquitted by the Lower Court.

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belonging to the Gaud Ghaut concern and Rs. 405-4, belonging to Mr. George Oram, and with resistance of the Police, and on the 2nd count, of forcibly carrying away and illegally confining Mr. George Oram and the witnesses Nos. 2, 3, 4 and 5.

Committing Officer.—Mr. E. W. Molony, Magistrate of Jessore.

Tried before Mr. W. S. Seton Karr, Officiating Sessions Judge of Jessore, on the 31st August, 1857.

sentence of imprisonment with hard labor for seven years. Others were sentenced to five years' imprisonment with hard labor, and two were sentenced to one year's imprisonment with hard labor. In appeal, the sentence of the Sessions Judge was affirmed with regard to some of the defendants, and reversed with regard to others, the Court attaching less weight, to the testimony of certain witnesses, upon whom the Sessions Judge relied, on the ground chiefly of the physical impossibility, that a disinterested and independent witness should during a riot, see with his own eyes, so as to be able to name them afterwards, one hundred and fifty men engaged in it.

Remarks by the Officiating Sessions Judge.—The prisoners are all charged with a violent attack on the Muttrapore Factory, followed by outrage and plunder, and arson, and by the severe wounding of Mr. Oram, an Indigo-planter ordinarily residing at the Factory of Gaud Ghaut. This gentleman having given in a compromise in the case, in which the Raja of Nuldunga had at first been implicated, the prosecution was conducted on the part of Government, Mr. Oram, being named as the first witness. On the day when the trial commenced, Mr. Oram did not make his appearance, but not wishing to delay the case owing to the immense number of witnesses in attendance, who were kept away from their homes and fields at an important season of the year, and believing that Mr. Oram would make his appearance in a day or two, I commenced the trial. When it had proceeded to some length, a medical certificate was forwarded by Mr. Oram, signed by the Civil Assistant Surgeon of the 24-Pergunnahs in which this witness was stated to be ill from fever and unable to leave his bed. The certificate bears date the 26th of August, but it is not shewn how long previously the witness had been ill, nor whether any thing, or what, prevented him from appearing on the 22nd of August, due notice having been regularly issued to him. This conduct is not satisfactory and requires explanation, and the Magistrate has been directed to call on Mr. Oram to show cause why his recognizance should not be declared forfeited. This being the case, it became a question whether the trial should not be postponed in order to procure the evidence of the principal witness. Had, however, this been done, either the witnesses must have been kept in constant attendance, or they must have been allowed to depart to their homes. In the first case they would have been put to great hardship, and in the second it is very doubtful whether they would ever have been *all* collected again, and in this latter case, most of them being summoned for the defence, the prisoners would have been the sufferers. Moreover, it appeared in the proceedings that every main feature in the attack on the Factory was deposed to by many independent witnesses: that all the points to be established could be established by other witnesses than Mr. Oram, and that in the matter of recognition and identity his evidence was not of much importance, as he did not profess to have recognized

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above half a dozen individuals, only four of whom were amongst the prisoners. Considering, then, the length to which the trial had proceeded in expectation of Mr. Oram's daily appearance, the hardship to the witnesses, and to the Jury, if the trial was delayed, as well as the ends of justice, I continued the proceedings and supplied the deficiency, of whatever importance it might be deemed, by calling up witnesses to swear to the deposition of Mr. Oram before the Magistrate.

The Court consider the Sessions Judge's remarks upon the state of the law regarding the erection of new bazars contiguous to bazars of long standing, and the powerlessness of the Police without fire-arms to repress such outrages deserving of the attention of Government.

The witnesses for the prosecution may be divided into three sets: (1,) certain burkundazes in the service of the Factory, who retreated with Mr. Oram into the house when the rioters attacked it, and who were themselves either injured, or assaulted and confined in a separate building; (2,) The Darogah, two jemadars, and other Police-men most of whom had been for some time stationed at the spot to prevent a breach of the peace; (3,) The Boses of Khejura, and others of the inhabitants. These witnesses are in all twenty-seven in number, and their evidence tallies in all essential points with regard to the attack.

It appeared that some months previously a dispute had arisen between the Raja of Nuldunga and Mr. Oram regarding the erection of a new bazar by the former. The case being brought under Act IV. of 1840 by the Magistrate was, by him, decided in favor of Mr. Oram, but in appeal this decision was reversed and possession adjudged to the Raja. The Court of Sessions considered that, however the erection of such a bazar might be made for the purpose of annoyance, and however prejudicial to order, peace, and security might be the proximity of a new bazar to one of old standing, yet that neither in the state of the law, nor in the particulars of the case, was there any thing to deprive the Raja of the right to establish his new bazar on a piece of ground of which he had taken a lease for the purpose. He had had uninterrupted possession of this piece for more than a month, and Mr. Oram had failed to prove previous possession or forcible dispossession within the limit of time allowed by the law. So matters stood towards the close of February. The Police were sent to prevent a breach of the peace in the bazar, as well as to guard against oppression or affrays arising out of the sowing of Indigo, the season for which was rapidly approaching. The question at issue between Mr. Oram and his ryots with regard to advances will be noticed subsequently. The main features of the attack, which we now come to, are as follows.

On the morning of the 4th of May last, the witness No. 8, who was then acting as jemadar of the Balagashti burkundazes, witness No. 9, a burkundaz, No. 12, also a burkundaz, and witness No. 13, who is the *gomashtah* of the Factory, with some others, went to sow Indigo in the village of Keturakandi which is about *two miles* distant from the Factory. On their arrival

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at the field where indigo was to be sown, two of the ryots ran away, but indigo was sown in some land regularly prepared for the reception of seed. The jemadar witness No. 8, says that indigo was sown in lands where rice and millet had already been sown: the *gomashtah* and others declare that it was on land, belonging to two ryots who had received advances for the purpose, and that the land had been prepared solely with a view to indigo. But operations had not been long commenced, when a man came to recall the party to the factory as a large body of men were assembled near it, with hostile or riotous intent. What follows is collected from the evidence of twenty-seven witnesses, which agree in all essentials, and which it is needless to review in detail. But by their united testimony it is clearly and indisputably established that Mr. Oram, about 8 or 9 o'clock in the morning, hearing of the approach of a large body of men went out and called on the Darogah and Police either to disperse or apprehend them, that the Police were quite unable to do any thing, the jemadar having fallen from his horse, and the others having fled at once; that Mr. Oram, with a few of his servants and the witness Kalinath Bose No. 14, retreated to his factory, having, in the retreat, been fired at by an up-country burkundaz and hit in the leg: that the factory was almost immediately surrounded by a very large body made up partly of *lattials* but mainly of ryots, who threw brick-bats, shot pellet-bows, and made use of their sticks where possible; that doors and windows were broken in and ladders applied to the walls by the rioters, down which the witnesses Nos. 3, 4 and 5, who were hurt in the assault, were made to descend, they being afterwards taken to the house of one Roton Majumdar adjoining the premises; that Mr. Oram, finding the case disperate, rushed from the upper story to which he had retreated, down the winding stair-case, with a weapon in his hand, and endeavoured to cut his way through the crowd; that losing his weapon, he made for the river which runs close to the factory, but falling in some jungle, he was immediately assaulted by Ramjewan, a *lattial* recognized by several witnesses, but not apprehended, and by a man named Kalachand Majumdar; that he was seized and taken forcibly away to a village nearly three miles off, whence he was released towards evening by the Magistrate, to whom information had been conveyed of the riot, and who, *at once* mounted his horse and proceeded to the scene of the occurrence which is eight miles from the station.

That the attack took place as above described, that a building used as an office was fired by the rioters, and that Mr. Oram was severely wounded by spears, sticks and stones, (evidence of the Civil Assistant Surgeon) cannot admit of the smallest doubt. The evidence is far too ample as well as satisfactory, to admit of question on this head. The points remaining for

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consideration are, who were the persons concerned in the outrage, and whether any oppressive or illegal conduct on the part of the factory people had led to the above results.

The latter point will be first considered. All the witnesses who could afford any light on this subject, have been severely cross-examined as to the state of feeling of the ryots in the neighbouring villages of Azimpore, Kodalia, Agrail and Champatollah, and as to any endeavours on the part of Mr. Oram or his men to sow indigo by force. It will be recollected that the jemadar, who accompanied the sowing party on the morning of the riot, deposes to seed having been scattered in the lands prepared for other produce, if not already sown with such produce, and to the hasty departure of the ryots whose fields were being sown. Was this illegal act, then, the last in a series of other oppressive or illegal acts, which exhausted the forbearance of the cultivators, and led them to assemble together for purposes of summary retaliation? There is not a shadow of evidence to support such a view of the case. The village in question is at some distance from the factory: the party there had done but little when they were informed of a large and riotous assemblage of persons, who could never have been collected together on such slender provocation, or in such a short space of time. Moreover, the villages in which indigo is proved to have been sown this year are those of Chundipore, Kissubpore and others, from none of which do any of the defendants come: the Police, who were stationed to prevent breaches of the peace as well as oppression, do not speak to any attempt to sow by force; no such attempt is pleaded as a set-off by any of the prisoners and the only petitions presented before the outrage, against the people of the factory, do not lead to any such inference. For instance, on the 13th of April last, two ryots of the village of Agrail presented a petition against Mr. Oram, whereupon the jemadar reported, that though formerly indigo had been cultivated in that village, there were no advances given or received now. Other petitions were presented relative to the new bazar, but they were against the Boses, and by persons not implicated in the present charge and from two proceedings recorded by the Magistrate dated the 25th and 26th of April last respectively, it appears that when Mr. Molony went to inspect the villages of Azimpore and Champatollah shortly before the outrage, he saw no indigo sown, though he saw the stumps of last year's indigo, and on his appearance, the ryots taking him for Mr. Oram, ran to their villages and commenced shouting to each other. From the first proceeding of the 25th, it appears that a visit to Agrail and Kodalia shewed the same results, the stumps of last year being visible and no indigo being sown this year and no complaints being preferred of any attempt to sow by violence.

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It is necessary to go somewhat into detail into these points in order to arrive at the conclusion that the ryots, instigated, no doubt, by some more powerful individual, had regularly leagued themselves together to deny the receipt of advances, and to refuse to cultivate, and that the outrage on the factory, so far from being a sort of rough and summary revenge for a long course of oppression, was a cowardly, deliberate, unjustifiable, and unprovoked attack. And at this conclusion I have arrived, without hesitation or doubt, after a very careful enquiry.

Two other points force themselves on the notice of the Court, and I deem it right to advert to them, as illustrative of the difficulty of preventing or repressing agrarian outrage in this part of the country. The first is, the state of the law regarding the erection of new or rival bazars, close to bazars of long standing. There is nothing now to prevent any rich or powerful person from setting up a new bazar, with the obvious intention of ruining or annoying an adversary. From this cause inevitably ensue, attacks on the unoffending parties in order to force them to desert the old bazar, and to purchase at the new one, retaliations from the opposite party, breaches of the peace, subversion of quiet and order, and protracted litigation. This state of the law, which is considered to be essential to trade or favorable to an abundance of the necessaries of life, is, I have no hesitation in saying, quite unsuited to the condition of this country, unsound in theory, and unsafe in practice. It is not once in ten times that a new bazar is opened to meet the advanced increased wants of the community, or to supply a mart essential for the necessaries of life. In most cases it is opened from purposes of revenge and annoyance, and we all know to what this leads in such a country as Bengal. But while such be the state of the law, the Court can only take care, that, right or wrong, convenient or inconvenient, it shall be impartially carried out. The obvious remedy is for the legislative to enact that new or rival bazars shall not be established within a certain distance of old ones, without the consent of the civil authority. If a new mart be really wanted for the convenience of buyers and sellers there could be no difficulty in procuring such consent. If it be to be established as is so often the case, for unfair purposes, incompatible with peace and order, it should be peremptorily closed, or consent be refused for its establishment.

The other point is the conduct of the Police. Considering the number of officials and the general requirements of the district, a fair body of Police had been stationed near the scene of the occurrence. There were two jemadars, several burkundazes, and a Darogah of a neighbouring thannah, who, it is to be observed, had come there the day before in order to apprehend

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some defendants in another case, and whose evidence is remarkable from its clearness and impartiality. Yet this body of men were absolutely powerless. They should in such a case, have had fire-arms with them, and on seeing a body of men amounting, it is stated, to eight hundred, and certainly to be numbered by hundreds they should, if unable to disperse them, have retreated with Mr. Oram to the factory, and have defended him and his property by using their weapons freely. There can be no doubt that, in the case of such an unprovoked outrage, Mr. Oram himself or the Police, or both, would have been fully justified, in the eye of the law, in shooting some of the foremost rioters dead.

We now come to the last point, which is the identification of the defendants. The facts being proved without question, and not being challenged by the Counsel for the defendants, there must still remain room for doubt as to the real implication of the persons named. Now admitting generally that it is customary in Bengal for prosecutors and witnesses to include unoffending persons, against whom they may have a grudge, in charges indisputably true, and that the evidence against each person requires to be very carefully scrutinized, yet there is nothing in the testimony of the main witnesses to shake confidence in their general accuracy. An attempt was made by the Counsel to impugn the evidence of the Boses *in toto*, as persons interested in the old bazar, which had been ruined or impaired by the establishment of the new one, and therefore likely to indulge malice against such ryots as had left them for the Raja. But I see nothing at all to induce me to reject the evidence altogether. The attack was made against *Mr. Oram*, by ryots and not by shop-keepers, aided by *lattials*, there is no question that the Boses live on the spot, one of them was actually in the factory at the time and another No. 13 is the *gomashtah*, and may be supposed to know most of the villagers by sight. Due weight has, moreover, been given to such pleas of enmity as rested on apparently substantial grounds. Again, there was nothing in the way in which the witnesses gave evidence to lead to a supposition that they were actuated by a strong personal feeling against all the parties. Some of the defendants named before the Police and the Magistrate, are not named by them in the Sessions, which does not look like pertinacious animosity, and, above all, the rapidity with which the investigation was followed up by the Police, precludes all suspicion of general connivance, and must have rendered nugatory any attempt to implicate innocent individuals by wholesale. The outrage occurred on the fourth, and on that very evening the depositions of witnesses Nos. 2, 3, 4 and 5, were taken. On the following morning Nos. 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 21, were taken, and the remainder the

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next day, or a few days afterwards. Most of the defendants have been named from the first and named consistently before each Court, and in identification before the Sessions, the defendants were not pointed out in any order, but selected, here and there, as they stood or sat in three rows.

The Jury after a patient hearing, which occupied eight entire days, were divided in opinion as to the guilt of the prisoners. One Juryman found all guilty except Nos. 9 and 31. Another would have acquitted Nos. 9, 14 and 15, for one reason, and Nos. 20, 21, 22, 23, 24, 26, 28, 29, 31, 37, 39 and 41, because he would reject generally the evidence of the Boses. And the third agreed with the above and would have acquitted No. 27 besides.

But I see no reason whatever for such a general mistrust of the evidence of these witnesses, and in an equally general way, but with more truth, it may be said that these ryots, defendants, came from the associated villages and were urged on by a more powerful hand, to attack the factory and to ruin Mr. Oram. There can be little doubt that the population of those villages turned out *in a body* to the attack, and the proper question for enquiry seems to be, not who of those villagers were present, but who through chance or foresight, had been absent from such a gathering. But I now proceed to record my finding against each defendant in succession, with the reasons for conviction.

Danesh No. 10 was mentioned before the Police and the Magistrate, and is identified before the Sessions by witnesses Nos. 4 and 6, who however (No. 6,) did not mention him at first, and by Nos. 13, 14, 16, 17 and 22. His defence is that he was told to give evidence in the case and refused, which plea is improbable and unsupported, and an *alibi*, which is unsatisfactory. I convict this defendant of the charges. And when, it may be asked, could he have been so told to give evidence, the riot occurring on the fourth and the evidence being recorded the next day, and meanwhile the villages having been literally emptied of their inhabitants?

Nussruddi No. 11 is recognized by witnesses Nos. 3, 7, 13, 14, 15, 16, 17 and 22, in the Sessions, as well as before the Police. His defence is that he refused to give evidence, though it does not appear either in his case or in that of others how he should ever have been asked to give evidence, and an *alibi*, which is not made out. I convict this prisoner.

Arzan Mundle No. 12 was recognized in the Mofussil and before the Sessions by witnesses Nos. 7, 13, 14, 17, 21 and 22. His defence is that he changed from the old to the new bazar. But many other ryots, witnesses, admit that they have done this and they are not made defendants. His defence is also an *alibi*, which I cannot believe. I convict this prisoner also.

Hachim No. 13 is recognized by witness No. 5, who picked

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him out of the other defendants without knowing his name, by Nos. 7, 13, 14, 15, 16, 17 and 20, which last however termed him Ussimoolla and by No. 22. This prisoner was mentioned from the first before the Police. His defence is that he refused to give evidence, and an *alibi*, in regard to which two witnesses depose that they know nothing, while the rest do not satisfactorily establish it. I convict this prisoner.

Nos. 16 *and* 17 are not mentioned by many witnesses as having taken a prominent part in the attack on the factory, but the testimony of a perfectly independent witness, No. 29, shows that they were of the party who were carrying away Mr. Oram at the very moment when the Magistrate came up. It is proved by this man that Mr. Oram was made over to him by the defendants and others and then taken away again from him in order that he, Mr. Oram, might be put into a palanquin. It is urged for the two defendants that Mr. Oram did not mention their names in his deposition but it is not shown how he should have known their names. And there is nothing whatever to invalidate the clear evidence of witness No. 29. The defence of the defendants, an *alibi*, is utterly to be distrusted and there is not even a plea of enmity. I convict both these men.

No. 19, *Fakeer Mamood* is a chowkeedar of one of the neighbouring villages. Such a person would be likely to be recognized by many and he has accordingly been identified, and spoken of as amongst the foremost, by witnesses Nos. 3, 6, 7, 8, 13, 14, 16, 17, 21, 22 and 27. This last witness who is a jemadar of Police, declares that seeing the defendant amongst the rioters and knowing him to be a watchman, he asked him what he meant by joining the rioters, when the defendant had the impudence to say that he was come to report the riot. The defence is that the chowkeedar gave evidence in the case of Act IV. and that when Mr. Oram came to sow indigo in the village of Teli Dankura, on the very day of the riot, he, the defendant, opposed Mr. Oram, when this gentleman's *lattials* burnt the houses of several villagers. But there is not a shadow of corroboration for this statement and it is utterly refuted by the reports of the Police and the careful investigation held on the occurrence. It is in fact a mere baseless insinuation, that whatever Mr. Oram suffered, he suffered at the hands of his own men. I convict this defendant.

No. 20, *Khosal Sheikh* was spoken of before the Police and the Magistrate, and is identified in the Sessions by witness No 5, who did not mention his name before the Police, and by Nos. 7, 13, 14 and 16. I consider the evidence against this man quite sufficient for conviction and convict him of the offence charged. His defence is an *alibi* at a village hardly a mile off.

Nos. 21 *and* 22 were mentioned before the Police and the

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Magistrate and are identified in Court by witnesses Nos. 13, 14, 16 and 17, and the latter by witness No. 21 also. The case against these men also is complete. The defence of the former is, the evidence of some witnesses who say that he came to tell them that *lattials* were robbing and plundering the village of Teli Dankura which statement was untrue, and the defence of the latter is an *alibi* on which I place no reliance whatever. I convict both these men.

No. 25, *Mokim Sirdar* was identified in Court by witness No. 7, though not named by him before the Police and by witnesses Nos. 13, 14, 16, 17, 18 and 21. His defence is an *alibi* which is not satisfactory, and that he was asked to give evidence, of which there is neither probability nor proof. I convict this man also.

No. 26 was deposed to before the Police by more witnesses than in the Sessions. But Nos. 13, 16 and 17, sufficiently bring the case home to him. His defence is an *alibi* resting on the evidence of two unsatisfactory witnesses. I convict this defendant.

No. 27, *Bycunto Kapali* was mentioned before the Police and is clearly identified by witnesses Nos. 13, 14, 15, 16, 17, 18, 20 and 21. His defence is an *alibi* at the Busunti bazar some sixteen miles off, on which I cannot rely, and old age, which fact has been taken into consideration in his sentence. I consider the case against this man amply sufficient for conviction.

Nos. 28 *and* 29 were deposed to before the Police and are clearly recognised by one or other of witnesses Nos. 13, 14, 16, 17, 18 and 21. They plead *alibis* which are not satisfactory. I convict them both.

No. 30, *Molamdi Khalassi* was one of the most active amongst the rioters, and was spoken to before the police, as well as identified in the Sessions, by a number of witnesses as Nos. 3, 6, 7, 13, 14, 15, 16, 17 and 18, which last witness however mistook his name and called him Hisabdi, and Nos. 21 and 22, and he is mentioned in Mr. Oram's deposition. This man's defence is that he was a servant of Mr. Oram and that he refused to give evidence in the case under Act IV. of 1840 about which time he left the service of that gentleman because he could not get his wages. This latter excuse, if true, would be a very good reason for his joining in an attack on the factory, and his *alibi* is not satisfactory. I convict this man of the charge.

No. 32, *Madari Chowkeedar* was mentioned before the Police, and is identified in Court by witnesses Nos. 7, 13, 14, 15, 16, 20, 21 and 22. His defence is that he had a quarrel some time back with the Boses, who turned him out of a *jumma*, which might be a very good reason why he should bear *them* a grudge, and an *alibi*, on which no reliance can be placed. I convict him of the charge.

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No. 33, *Doad Mullick* was deposed to before the Police and is clearly identified by witness No. 3, who however had not mentioned him previously, Nos. 7, 13, 14, 15, 16, 17, 20, 21 and 22, besides being mentioned in Mr. Oram's deposition. His defence is that he had a quarrel with Mr. Oram, whose servants took away his cows, but he admits that though he complained about it, he only got back one cow out of twelve. This, so far from telling in his favor, would be a very good reason why he should entertain hostile feelings to Mr. Oram. He also pleads an *alibi*, which is unsatisfactory, and old age, which has been considered in the *very lenient* sentence passed on him. I convict him of the charge.

Nos. 34, 35 *and* 36, Seetaram *alias* Hindoo Singh, Shukul Thakur *alias* Hunooman, and Buriar Singh who appears to have been known sometimes as Natu Singh, are three up-countrymen, who were foremost amongst the rioters. They were mentioned before the Police, and are identified by one or other, or all of the witnesses Nos. 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21 and 22. That these men were employed to head the attack, I have not the smallest doubt. The identification was complete and satisfactory in every respect, and that there should be any doubt as to one man's precise name, (evidence of witness No. 6,) or that most of the witnesses should only know these men as strong up-country hired servants, or *lattials*, is only what was to be expected. Their defence is that they were at Alipore near Calcutta on the day of the riot, to support which they have summoned several burkundazes of the Collectorate guard there. I have no doubt that they went off to Calcutta immediately after the riot, for it was the knowledge of the fact that several up-countrymen had gone to Calcutta after the affair, that led to their pursuit and apprehension there. I can put no reliance on the statement of their witnesses, who profess to remember accurately the day when they appeared at Alipore. Indeed the evidence for the prosecution and against these men is too overwhelming to be contended against. I convict them all three.

No. 37, *Purushoollah* was deposed to by witnesses Nos. 7 and 21, in the Mofussil and in the Sessions, and identified by witnesses Nos. 13, 14, 16 and 17, in the Sessions. His defence is an *alibi*, which is unsatisfactory. I convict him of the charge.

No. 38, *Manik Sheikh Khalassi* was deposed to in the Mofussil and in the sessions by witness No. 3, recognized in the Sessions by No. 6, and sworn to by Nos. 7, 13 and 15 though not mentioned in the Mofussil, and by Nos. 16, 17, 20, 21 and 22 in both places. He is spoken to by several witnesses as the man who set fire to the house. His defence is that he had had service at the factory but left because six months' wages

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were owing to him, which, if true, tells by inference against him, and an *alibi*, which is as unsatisfactory as the generality of these pleas in this case. I convict him of the charge.

No. 39, *Jhurroo Sheikh,*—against this man, besides the evidence of witnesses Nos. 15, 16 and 17, there is that of No. 26, the Darogah, from whose custody the defendant escaped at the time of the riot to join the rioters in the attack, his defence is that he ran away from the Darogah, which he had no business to do, and went to his village, which I have no doubt he did *after* the riot. I convict him.

No. 40, *Manik Sheikh* was mentioned before the Police and identified in the Sessions Court by witnesses Nos. 3, 7, 13, 14, 15, 16 and 17. His defence is an *alibi* which is not established. I convict him of the charge.

Nos. 41 *and* 42, Goburdhun Ghose and Chamari Sheikh were mentioned before the Police and in the Sessions by either Nos. 6, 7, 13, 14, 16, 17 and 21. Their defence is an *alibi*, not established. I convict these men of the offence.

After the above review, I sentence the defendants Panaoollah (No. 16,) Benode Mallah (No. 17,) Fakeer Mahomed (No. 19,) Molamdhi Khalassi (No. 30,) Madari Chowkeedar (No. 32,) Seetaram Singh *alias* Hindoo Singh (No. 34,) Shukul Tacoor *alias* Hunooman (No. 35,) Buriar Singh (No. 36,) and Manik Sheikh Khalassi (No. 38,) to seven years' imprisonment with hard labor as being foremost in the business and most to blame.

The defendants Danesh Sheikh (No. 10,) Nussruddi (No. 11,) Arzan Mundle (No. 12,) Hachim (No. 13,) Khosal Sheikh (No. 20,) Kefaitoollah Sheikh (No. 21,) Madari Mollah (No. 22,) Mokim Sirdar (No. 25,) Jamal (No. 26,) Gobind Chowkeedar (No. 28,) Khodabux Biswas (No. 29,) Purushollah Sheikh (No. 37,) Jhuroo Sheikh (No. 39,) Manik Sheikh (No. 40,) Goburdhun Ghose (No. 41,) and Chamari Sheikh (No. 42,) are sentenced to five years' imprisonment with hard labor.

The defendants Bycunto Kapalee (No. 27,) and Doad Mullik (No. 33,) are sentenced to one year's imprisonment with hard labor, part of the charge proved being arson, the labor is not commutable to a fine. The Magistrate acted on hearing of the riot, with great energy and promptness and with judgment in the conduct of the case.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The Sessions Judge has given the evidence in this case at full length.

These gross outrages by armed retainers are so common in Bengal, and have been so little checked, the principals in almost every instance escaping, that, for the ends of justice it is to be regretted, any compromise should have been effected.

The Sessions Judge has shown, after careful enquiry, how the

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outrage upon the factory must have been instigated; and has aptly stigmatised it as a "cowardly, deliberate, unjustifiable and unprovoked attack."

His remarks upon the state of the law regarding the erection of new bazars contiguous to bazars of long standing, and the absolute powerlessness of the Police without fire-arms to repress such outrages, deserve the attention of the Government.

The facts of the case, as proved by the evidence, have been correctly stated by the Sessions Judge. The only question for the Court to determine is, whether upon the evidence, the prisoners, all of whom have appealed and been defended by Baboos Unodapersad Banerjea and Sreenath Doss, are all or any of them guilty.

After most carefully going through the whole evidence on the record, and comparing the statements made by the witnesses before the Police and the Magistrate with their subsequent depositions in the Sessions Court, I differ only from the Sessions Judge regarding the testimony of the Boses, which is not in my opinion entitled to the amount of credit he attaches to it.

Putting aside *interested* motives, by which they may or may not have been influenced, there is much in their evidence to create a doubt, whether they depose correctly to what came under their own observation.

Let us take the evidence of witness No. 13, Mohunchunder Bose, who being the *gomashta* of the Factory, and being present, undoubtedly must have seen a good deal of what took place, and may be supposed to know, as the Sessions Judge remarks, most of the villagers by sight.

Now he, and the other Boses, and Issur Doss, a Kellassee in Mr. Oram's service, witnesses Nos. 14, 15, 16, 17, 18 and 21, depose together before the Darogah, that the attack upon the factory and Mr. Oram was made by about one hundred and three men, *whom they name.* Before the Magistrate witness No. 13 names one hundred and fifty, and identifies twenty-four as being present and concerned in the outrage. Before the Sessions Judge he identifies thirty-four. Some named before the Darogah are not named before the Magistrate, and others named are omitted. There is the same difference in the testimony of the witnesses upon this point before the Sessions Judge. I would not lay much stress upon this fact. It is natural. It must occur where so many are concerned. The contrary, that is, a clear and distinct identification of the *same* individuals, especially where the number is so large, would be much more open to suspicion. But what throws great doubt upon the identification of those alleged to be actually present and joining in the attack is the number *named* at first. It may be very true that the population of the associated villages turned out *in a body*, as the Sessions Judge remarks, and were urged on under a powerful influence to attack the

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Factory and ruin Mr. Oram; but any one who has had Mofussil experience of bodies of men collected for such purpose, and apparently acting in concert under such instigation, must be well aware, that many take no part in the outrage, though they swell the number from fear and submission, and that those who carry out the orders they have received to the very letter, at all hazards, are the armed retainers and hired *lattials*, who may be aided and abetted in the act by the more interested or more venturesome of the villagers. There are besides always a large number of *tumasha-beens*, or lookers-on to see the row. Although therefore legally all who are present, and take no steps to prevent the affray, are more or less implicated, it would be most unjust not to make a broad distinction, and it is the more necessary for the ends of justice, that the Court should be in possession of clear and consistent and reliable evidence regarding those who actually took part in the perpetration of this outrage.

Now it is a physical impossibility under the circumstances of the case, that a disinterested and independent witness should see with his own eyes, so as to be able to name them afterwards, one hundred and fifty men engaged in the attack. He is never likely to be near enough to distinguish them all, and even if he was, the noise and confusion and excitement would prevent such wholesale recognition.

The witness No. 13 was some distance off under a tree, but, to get over the difficulty, he explains, that he was in different places, and as there was an attack on Mr. Oram near the river subsequent to the attack on the Factory, which he witnessed, he states that he was first on one side and afterwards on the other side of the river. The evidence of the other Boses is of the same character. I think such evidence should be received with great caution.

It has been urged in defence of the prisoners, that the witness No. 20 states in his evidence that the village of Doorgapore, where the Boses reside, is distant two days' journey from the Factory, and it was unlikely, therefore, that they should have been present to see what they describe. This is the statement of only one witness, and the fact is not confirmed by any other evidence on the record. But, be this as it may, I have no doubt in my own mind from the whole evidence, that they were present as represented, though I doubt that they saw all they describe.

Inasmuch, therefore, as there are facts deposed to by them, upon which dependence may be placed, I would reject only such portions of their testimony as are not corroborated by other reliable evidence.

The Sessions Judge has trusted their evidence as to some of the prisoners, and rejected it as to others.

Witnesses Nos. 16, 17, 18, 20 and 21, as well as witness

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No. 4, swear to the prisoner No. 9 being present, armed with a stick amongst the rioters; yet the Sessions Judge, not without reason, disbelieves their testimony and acquits the prisoner.

The prisoners Nos 14 and 15, are acquitted for reasons given by the Sessions Judge, although their participation in the riot is sworn to by the Boses and some of the Police.

The prisoner No. 23 is mentioned by only two of the Boses, and justly acquitted.

The prisoner No. 24 is justly acquitted, although the Boses mention him, because the witnesses Nos. 3, 4 and 7, who had named him in the Mofussil investigation, could not identify him before the Magistrate.

The prisoner No. 26 is convicted chiefly upon the evidence of three of the Boses.

It is extraordinary, but so it is in almost every outrage, instigated as this appears to have been, that the Darogah and the Police recognise so few.

The prisoners' pleaders admit that their evidence is disinterested and most to be relied upon.

If out of an immense body of rioters, many of whose faces must be familiar to them, the Police can recognize so few, and if their testimony is honest, it throws of course greater doubt upon the evidence of those witnesses who identify them *en masse.*

Relying upon the testimony of the Boses, for the reasons above stated, only when such testimony is corroborated by other evidence on the record, I acquit the prisoners Nos. 21, 22, 26, 28, 29 and 37, and direct their immediate release.

I also acquit and direct the release of the prisoners Nos. 25, 27 and 41. The evidence against them is not so clear and satisfactory as I could wish, and, as I am not satisfied from that evidence of their participation in the crime charged, I think they are entitled to the benefit of the doubt.

I see no reason to disturb the sentences passed by the Sessions Judge upon the remaining prisoners, and therefore reject their appeal.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT

versus

TRIAL NO. 1, FOR OCTOBER, 1857.

MEHUR OOLLAH (No. 7,) BATU SIRDAR (No. 8,) JUNOO SIRDAR (No. 9,) MOSSABDY SIGDAR (No. 10,) KALACHAND MOJOOMDAR (No. 11,) AND KAMAL SHEIKH (No. 13.)

NO. 1 FOR SEPTEMBER, 1857.

MANGUN SIRDAR (No. 2.)

Jessore.

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In appeal the sentence passed by the Sessions Judge was affirmed with regard to some of the defendants, and reversed with regard to others. See remarks of the Court in the appeal of Danish Sheikh and others, defendants in the same case, 27th January, 1857. The Court observe that the Jury in this case have found some of the prisoners guilty upon the very same evidence, which they distrusted in the former case, and on which other prisoners were acquitted by them.

CRIME CHARGED.—Committing a riotous attack upon the Indigo Factory of Muttrapore attended with arson, the severe wounding of Mr. George Oram and slight wounding of Ramnarain Singh and others, the plunder of property valued at Rs. 308-9, belonging to the Gaud Ghat concern, and Rs. 405-4 belonging to Mr. George Oram, and with resistance of the Police on the 4th May, 1857; corresponding with the 23rd of Bysack, 1264, B. S.; 2nd count, forcibly carrying away and illegally confining, Mr. George Oram, Ramnarain Singh, Nussrut Khan, Arman Khan and Reazoodhi.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. E. W. Molony, Magistrate of Jessore.

Tried before Mr. W. S. Seton Karr, Officiating Sessions Judge of Jessore, on the 24th October, 1857.

Remarks by the Officiating Sessions Judge.—In trial No. 1, for October, 1857. This case is supplementary to the Calendar of the Magistrate, No. 5 for July last. The prisoners were entered by the Magistrate in two distinct Calendars, the prisoner Mangun (No. 2,) whose case stands over for his witnesses, being the first in one Calendar, and the prisoner Mehur Oollah the first in the second. But as the case against all the prisoners relates to precisely the same events, and is supported by exactly the same evidence, both the Calendars have been dealt with as one continuous Calendar, to avoid confusion, and a needless repetition of the same evidence in a separate bundle. The prisoners in the Sessions Court, are consequently marked as numbers 2 to 13. The history of the case, which is that of the attack on the Muttrapore Factory belonging to Mr. George Oram, is fully narrated in the jail delivery, statement No. 6 for August last, (a copy of which has not here been given owing to its being a very long one, and as it has gone to the Sudder in appeal) on the trial of thirty-three prisoners, committed in the first Calen-

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dar above noted. As to the truth of the facts, there can be no sort of question. The only question for the Court to determine is, were the present parties concerned in the attack.

The Jury which consisted of the same persons as had sat on the original trial, found all the parties guilty with the exception of Nos. 3, 4 and 6.

My opinion as regard each is as follows.

Prisoner No. 7 is identified by witnesses Nos. 2, 4, 5, 7 and 8, of whom the four first have mentioned his name all along. His defence is that he had an old quarrel with the Boses, in which he admits, that he entered a *razinamah*, and some witnesses who know nothing at all about him. The evidence against him is clear and consistent. I convict him.

Prisoner No. 8 is mentioned by witnesses Nos. 1, 2, 4, 5, 6 and 8, of whom Nos. 2, 4, 5 and 6, have mentioned him from the first. His defence is an old quarrel about a tree, which the Darogah made up, and some of his witnesses know that a person named Neamut bought a tree from the prisoner some seven or eight years ago, which Mohan Bose objected to being carried away. The other witnesses know nothing. The defence appears to me frivolous, and the evidence for conviction clear.

Prisoner No. 9 is identified by witnesses Nos. 2, 4, 6 and 8, of whom the three first have mentioned him all along. His defence is that he was sued unsuccessfully by a brother of Mohan Bose on a bond, and an *alibi*. I consider the defence to fail and the evidence to be quite sufficient for conviction.

Prisoner No. 10 is identified by witnesses Nos. 1, 2, 4, 5, 6 and 7, all of whom, except Nos. 1 and 7, named him before the Police, his defence is an old quarrel and an *alibi* neither of which are proved in any way. I convict him.

Prisoner No. 11 is identified by all the witnesses, and only Nos. 1 and 8, failed to name him at first. He is moreover proved to have been prominent in attacking Mr. Oram personally, thrusting at him with a spear when that gentleman was down on the ground, after escaping from the Factory. His defence is an *alibi*, supported by two witnesses, whose evidence I do not believe. I convict this prisoner.

Prisoner No. 13 is identified by witnesses Nos. 2, 4, 6 and 8, of whom the three first named him before the Police, he pleads sickness and an *alibi*, and brings two witnesses to support his plea, whose evidence I cannot accept. I convict this prisoner.

Prisoner No. 11 is sentenced to seven years' imprisonment with hard labor, and prisoners Nos. 7, 8, 9, 10 and 13, to five years' imprisonment with ditto, arson being part of the charge proved.

In trial No. 1 for September, 1857, in continuation of trial No. 1 for October, 1857. The prisoner is a notorious character, and his apprehension was only effected after a large reward had

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been offered for him. The evidence of witnesses Nos. 1, 2, 4, 6, 7 and 8, is clear and positive as to his presence, and he has been named by them all from the first with the exception of witness No. 1 who, however, may very well have not known his name when giving evidence before the Police. He, the prisoner, had summoned eight witnesses in his defence, of whom some only could be found and they declared that they did not even know him by sight. The prisoner then declared that he had summoned, not these witnesses, but others of the same name from a different village of the same name, and claimed that they should be heard. They have accordingly been sent for and the case suspended as far as he is concerned.

The witnesses of the defendant Mangun were this day heard. Their evidence as to an *alibi* was of the vaguest and most uncertain kind. Of the Jury who sat on the case two were present, the third being unavoidably absent through severe illness, and they found a verdict of guilty, in which I entirely concur. The prisoner is a notorious and desperate character. I sentence him to seven (7) years' imprisonment with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) With reference to my remarks on the evidence of the Boses in the appeal of the prisoner in No. 697, I acquit the prisoner No. 2, Mangun Sirdar, No. 7, Mehuroollah, No. 9, Junoo Sirdar and No. 13, Kamal Sheikh and direct their immediate release. I see no reason to interfere with the sentences passed by the Sessions Judge upon the prisoners No. 8 Batu Sirdar, No. 10, Mossabdy Sigdar and No. 11. Kalachand Mojoomdar and reject their appeal. I observe that the Jury in this case have found some of the prisoners guilty upon the very same evidence, that of the Boses, which they distrusted in the former case, and on which other prisoners were acquitted by them.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT

versus

PUBBAN MEEAH (No. 1,) KUMMEERUDDY (No. 2,) GOGUN TAGORE (No. 3,) BUSSEERUDDY SIRDAR (No. 4,) TOZUMMUL HOSSEIN ALIAS TOZAUDDY (No. 6,) MEER BISSOOALLY ALIAS SURFURUZALLY (No. 7,) MEER RUSTOMALLY (No 8,) MEER SAMSHEREALLY (No. 9,) MEER GOLAM ALLY (No. 10,) ANESH TAGORE (No. 11,) MEER GOLAM ALLY KHOLEEFA (No. 12,) SHEIKH MANGUL (No. 1 ,) SULLEEMUDDY (No. 14,) HARANOOLLAH (No. 15,) MAHOMED BASERE (No. 16,) OOMUR KHAN (No 17,) OOMACHURN SINGH, (No. 18,) MOHUN CHUNDER BISWAS ALIAS KISTOMOHUN BISWAS (No 19,) DHUNNOONJOY KUR (No. 20,) PRANKISTO SARUN (No. 21,) MUDDUN MEEAH ALIAS BUDDAN (No. 22,) RAMKOOMAR SARUN (No. 23,) PRANNATH SARUN (No. 24,) AND MADARY KHAN (No. 25.)

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The sentence of the Sessions Judge affirmed in appeal. Held that the collection of a large body of armed men, even if they possessed the right to sow indigo, and were in the execution of a lawful object, was calculated to excite alarm and threaten the peace of the neighbourhood, and

CRIME CHARGED.—Affray attended with the wilful murder of Adam Sheikh and wounding Meer Golam Ally the defendant No. 12.

CRIME ESTABLISHED.—Affray in which Adam Khan was killed and Golam Ally wounded.

Committing Officer.—Mr. J. H. Ravenshaw, Officiating Joint-Magistrate of Furreedpore.

Tried before Mr. R. Abercrombie, Officiating Sessions Judge of Dacca, on the 22nd October, 1857.

Remarks by the Officiating Sessions Judge.—On 4th April corresponding with 23rd Cheit, B. S. an affray took place between the retainers of Mr. McArthur, manager of the Meergunge Indigo Factory, on the one side, and the villagers of Jypassah on the other. As would appear from the Officiating Joint-Magistrate's abstract, these villagers are rather a refractory set, refusing to pay rent to Mr. McArthur, who is the putneedar, or to sow indigo. This was the cause of the affray.

As usual in cases of this description, there are amongst the witnesses partizans of both sides, each anxious to attach the greatest, if not all the blame, to the opposite party. It is, however, established beyond a doubt by the evidence of the Police,* who were on the spot and witnessed the occurrence,

* Witnesses Nos. 1, 2, 23 and 24.

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shewed, that instead of resorting to the law for the purpose of establishing their right and obtaining redress they were determined, if resisted, to take the law into their own hands; that the legality of the object under such circumstances would be no justification, though it might form some ground for the mitigation of punishment.

that the affray was mutual, and that both parties were armed. The attack was certainly commenced by the factory people, who came with a body of three or four hundred armed men, but it is a fact equally established by the evidence of numerous witnesses, that the villagers were quite prepared to give them a warm reception, and turned out against them in equal numbers armed with weapons. During the affray that ensued, one man named Adam Khan was killed, having received a wound from a *soolfee* in the chest, described by the Medical Officer* as one of a very serious nature, the iron head of the weapon remaining in the body of the deceased until extracted by the Doctor some days after death. Another man Golam Ally Khalleefa† was wounded. It is a disputed point to which side the man who was killed belonged, both parties claiming him and the evidence of both sides being pretty evenly balanced. The wound which caused the death is not proved to have been inflicted by any of the prisoners present, nor does it appear certain by whom the *soolfee* was thrown.

* Witness No. 29.

† Prisoner No. 12.

All the prisoners plead *not guilty*. Nos. 1, 2, 4, 7, 8, 10, 13, 14, 15, 17, 20, 21, 23 and 25, set up an *alibi* stating that they were in their houses at the time of the affray, that is, in the village Jypassah, on the borders of which the fight took place. The other prisoners plead enmity as the cause of their being named amongst the defendants. They have all failed to afford satisfactory proof of the defence set up.

The Law Officer in his *futwa* pronounces all the prisoners except No. 5 guilty of "affray in which Adam Khan was killed and Gollam Ally wounded" but acquits them of wilful murder.

I concur in the above verdict and taking into consideration the fact that the factory people commenced the affray, I sentence prisoners Nos. 1, 2, 3 and 4, to seven (7) years' imprisonment with labor in irons, and prisoners Nos. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25, to five (5) years' imprisonment with labor in irons.

Against Panchcowry, prisoner No. 5, there is no proof, the witnesses having failed to identify him. He is therefore acquitted and released.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The prisoners Nos. 1, 2, 3 and 4, have been defended by Mr. Peterson and Mr. Allan and the prisoners from No. 6 to No. 25 by Moulvee Aftaboodeen and Baboo Unokoolchunder Mookerjee.

It has been urged principally in behalf of the prisoners Nos. 1, 2, 3 and 4, that they were on the spot, where the affray took place, for a *legal* purpose; that the lands belonged to Mr. McArthur as included in his *putnee*, that they had a *right* to

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sow the indigo, that they were armed only for their own protection and that if, in the exercise of the legal right, they opposed an attack from the opposite party, they could not be considered the *aggressors*, and should not have been subjected to a greater punishment. It was also argued that inasmuch as they had the right to sow the indigo, the opposite party by disturbing them in the execution of a legal right, were answerable for the consequences under the provisions of Section 15, Regulation VIII. of 1819 and lastly, that if, notwithstanding the lawful right to sow the indigo, it be proved, that the prisoners, by resisting the attack made upon them, were guilty of any offence, both parties were *in pari delicto*.

The affray attended with the homicide of one person and the wounding of another is clearly and distinctly proved.

Regarding the murdered man, the Magistrate states that he has no doubt from the evidence but that he was *a servant of the Factory*, though it is not proved on whose part he was present. He considers the affray to have been premeditated by the *Factory people* and that they were the *aggressors*, insomuch as they endeavoured to compass a legal end by illegal means; but as the ryots had no right to resist them he considers both parties *equally culpable*.

The Sessions Judge is of opinion that the cause of the affray was the refusal of the villagers, stated to be "rather a refractory set, to pay rent to Mr. McArthur, who is the putneedar or to sow indigo." He finds that "the affray was mutual, and that both parties were armed," but that "the attack was certainly commenced by the Factory people, who came with a body of three or four hundred armed men."

It is not proved to which party Adam Khan, who was killed, belonged, and the same doubt exists as to the wounded man, Golam Ally Khuleefa, prisoner No. 12, inasmuch as he gives a different account of himself before the Sessions Judge from what he first gave before the Darogah. The presumption is that he is one of the villagers.

Regarding the right of the Factory people to sow the indigo, it is not proved whether Mr. McArthur was in *actual possession* of the lands, nor whether the ryots had entered into any contracts which they refused afterwards to fulfil.

It is clear, however, from the evidence on the record, that the Factory people came in a large body armed for the purpose of sowing indigo, and evidently prepared to carry out that object by force, if they were opposed.

Admitting that they had the right to sow the indigo, and were in the execution of a lawful object, and admitting also the difficulty which Indigo Planters have to contend against, where villagers are refractory and oppose them, the collection of so large a body of armed men, the leaders of which some of the

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witnesses state were mounted on an elephant and horses, to carry out at all risks a common design pre-determined and pre-arranged, was calculated to excite alarm and threaten the peace of the neighbourhood and shewed, that instead of resorting to the law for the purpose of establishing their right and obtaining redress, they were determined, if resisted, to take the law into their own hands. The legality of the object, if admitted, is under such circumstances, no justification, though it may form some ground for the mitigation of punishment. Had it not been for so large an armed force, and shew of violence, it is doubtful whether there would have been any affray, or at any rate whether the consequences would have been so serious.

Had they quietly and peaceably assembled to carry out a legal object, and in the execution of it been attacked by the opposite party, it would certainly be a question, how far, if at all, in defending themselves they would have been accountable for the consequences.

After, however, carefully examining the whole evidence, I think it bears out the conclusion at which the Lower Courts have arrived, and I see no reason to interfere with the sentence passed upon all the prisoners by the Sessions Judge, and reject their appeal.

The sentence is a lenient one, when it is considered that these agrarian outrages attended with loss of life are very common. In another case of a similar character, attended with culpable homicide and wounding, the servants of Mr. McArthur's Factory were found guilty, and sentenced by the Sessions Judge to five years' imprisonment, and his sentence was confirmed in appeal by this Court on the 17th April, 1857.

SUMMARY CASES.

JANUARY,

1858.

SUMMARY CASES.

JANUARY, 1858.

PRESENT:

G. LOCH AND H. V. BAYLEY, ESQS.,
Officiating Judges.

GOVERNMENT AND OTHERS, PROSECUTORS

RAMLOLL PATRO SURNOKAR.

Hooghly.

1858.

January 19.

Case of RAMLOLL PATRO SURNOKAR.

Remarks on necessity of enquiries into sanity before a Magistrate commits a prisoner; and on the data of the statements of Medical Officers on the point of previous insanity.

CRIME CHARGED.—1st count, wilful murder of Khetromonee Surnokarnee, daughter of the prosecutor Goshain Doss Surnokar, and wife of the prisoner, on the 15th July, 1857, corresponding with 1st of Srawun, 1264, B. S., 2nd count, culpable homicide of the said Khetromonee Surnokarnee.

Committing Officer.—Lord H. Ulick Brown, Officiating Magistrate of Hooghly.

Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of Hooghly, on the 30th November, 1857.

Remarks by the Officiating Additional Sessions Judge.—The prisoner pleads guilty. It has been proved* that he freely and voluntarily confessed both before the Darogah and before the Magistrate. It appears that the prisoner's wife had recently quitted her father's house to cohabit with her husband. The husband and wife were sleeping together on the night in question, when a dispute arose because she expressed a wish to return to her father's house. The husband became enraged, attacked his wife, and pressed violently upon her chest and throat with his hands and feet. He heard, as he avers, the noise of creaking of bones issue from her windpipe; and she died shortly afterwards. He stated before the Magistrate that his intention was to chastise his wife, and not to kill her.

* Wit. No. 8, Hurrischunder Roy.
" " 10, Meheroollah Chuprassee.

The prisoner's father† deposes that he was awoke by his son, who told him that his wife had died from a snake-bite; and a cousin‡ of the prisoner deposes that he was also sleeping in the house, and that he was told that the woman had died from a snake-bite.

† Wit. No. 14, Bheem Surnokar.

‡ Wit. No. 13, Sreemunt Surnokar.

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Case of RAMLOLL PATRO SURNOKAR.

The Civil Assistant Surgeon* proves that on opening the neck of the deceased he found that the vertebræ were fractured; he is of opinion that "the fracture had evidently been caused by the head being violently twisted round, which must have caused almost immediate death."

* Wit. No. 1, Dr. E. C. Thorp.

The prisoner's relations mentioned above having stated that he had shown symptoms of insanity, I directed that the Civil Assistant Surgeon should enquire into the state of his mind. The Civil Assistant Surgeon now deposes that, in his opinion, the prisoner, is perfectly sane, and that no traces of recent insanity can be detected. He further thinks that it is not possible that the prisoner could have been in an unsound state of mind at the time of the murder.

The *futwa* of the Law Officer convicts the prisoner of wilful murder, and declares him liable to *kissas.*

I agree with the Law Officer. It is evident that the prisoner killed his wife in a very deliberate and determined manner. Seeing no extenuating circumstance, I would recommend a capital sentence.

I have pointed out to the Magistrate that enquiry into the state of the prisoner's mind should have preceded the sessions trial; and that the second count was superfluous.

Resolution of the Nizamut Adawlut.—(Present: Messrs. G. Loch and H. V. Bayley) No. 50, dated the 19th January, 1858.

The prisoner confessed to the Police, the Magistrate and the Sessions Judge. To a separate question put on the 24th August, irrespective of his general defence before the Magistrate on the 19th, the prisoner states that it was not his intention to kill, but to chastise his wife. With this exception the prisoner's confessions shew that his intent was to take the deceased's life. He details his twice twisting her neck, his squeezing her windpipe, and simultaneously pressing down her chest, and then kicking her, and adds that after *each* of these various attacks, she was unable to speak. There is nothing to lead the Court to doubt that these confessions represent truly the acts and intent of the prisoner toward his wife, the deceased. But there is one point in the case which should have been in the first instance carefully investigated, and which has been very imperfectly and unsatisfactorily enquired into, i. e. that of the prisoner's sanity. Witness No. 14 the father of the prisoner does not state any thing of prisoner's insanity in his deposition before the Police. He does distinctly depose before the Magistrate and Sessions Judge to prisoner having been insane, off and on, about the time of the crime being committed. The Magistrate also records in Column 14 of the Calendar: "The Darogah and prisoner's father state that the prisoner is not in his right mind, and his

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Case of Ramloll Patko Surnokar.

appearance and manner render this not improbable." The crime was committed on the 17th July, and this opinion of the Magistrate is recorded in September. (The Magistrate does not state on what date.) The Darogah's report, immediately after the apprehension of the prisoner, is that *then* he was like a demented person. On the other hand, it is clearly in evidence that the prisoner assigned as the cause of his wife's death, a snake-bite; and detailed his cause of quarrel with her in a clear manner. Further, the Civil Surgeon states on oath that the prisoner is sane, and that *he does not consider that he was ever otherwise.* But this opinion does not appear based on any precise or detailed data; while satisfactory proofs of the insanity of the prisoner about the date he committed the crime, might probably have been obtained by the evidence of neighbours, and others resident where prisoner lived, or who were intimate with him. This evidence should have been sought for by the Magistrate in the *first* instance, instead of his holding, and acting upon the opinion, that "it will be time enough to make enquiries on this subject when he has been convicted of the above charges."

The Additional Sessions Judge will proceed to take evidence of the nature above indicated; and also re examine the Civil Assistant Surgeon more fully as to the grounds of his opinion that the prisoner *had not been before insane;* and then re-submit the case to this Court, with his own opinion.

PRESENT:

G. LOCH AND H. V. BAYLEY, Esqs.,
Officiating Judges.

Dacca.

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Case of Musst. Chundra.

Remarks upon a commitment on a *higher* charge than that to which prisoner had pleaded; and on the sentence of imprisonment *with irons* on the prisoner, a female. Re-trial ordered.

GOVERNMENT

versus

MUSST. CHUNDRA.

Crime Charged.—Having grievously wounded Mussamut Nullita, the fatal effects of which caused her death, after nine days.

Committing Officer.—Baboo Joy Chunder, Deputy Magistrate of Manickgunge.

Tried before Mr. R. Abercrombie, Officiating Sessions Judge of Dacca, on the 17th December, 1857.

Remarks by the Officiating Sessions Judge.—In this case the prisoner and the principal witnesses are all near relations. From the deposition of Musst. Shanto,* a cousin of the deceased, it would appear

* Witness No. 1.

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that, in consequence of the absence from home of her husband, the prisoner slept in her house on the night preceding the occurrence. Early in the morning the prisoner rose, and desired Musst. Fellee,* daughter of the deceased, to open the door. The girl complied with her request, when the prisoner struck her on the head. Deceased asked her what she meant by beating her daughter. On this the prisoner seized hold of her, threw her down, and commenced striking her on the head with a brass ornament called *kharoo*, weighing $22\frac{1}{2}$ *tolahs*. The witness went out and called her mother,† and on her return found the prisoner still beating *Nullita*. When spoken to she desisted, and went off. The poor woman was perfectly senseless and bleeding profusely from the head. She died on the 9th day. The above facts are corroborated by witnesses Nos. 2 and 3, who witnessed the greater part of the occurrence, as well as by Hookma Chowkeedar,‡ who came in at the end and saw the last blow inflicted.

* Witness No. 2.

† Witness No. 3.

‡ Witness No 4.

Manik Manjee,§ husband of the deceased, deposed that he was absent from home at the time of the occurrence, but on his return he found his wife lying senseless and speechless with her skull broken, from the effects of which she died. He heard of the circumstances attending her being wounded, but refused to prosecute.

§ Witness No. 9.

The severe treatment which the deceased underwent is fully proved by the testimony of the Medical Officer‖ who examined the body. He states that the bones of the skull on the left side were broken into fragments and depressed inwards on the brain. There was a large wound of the integument of the skull corresponding, and a quantity of blood effused upon the brain. He adds his opinion that the wounds on the skull were the cause of death. In addition to the above, three ribs were broken.

‖ Witness No. 8.

In her defence before the Deputy Magistrate the prisoner states that the wounds on the deceased were inflicted on her by some man who came into the house during the night and wounded her (prisoner) also. At the Sessions trial she simply denied having wounded the deceased, and added that the *kharoo*, the instrument with which the deed was committed, was not her property.

The Town Cazee who sat with me on the trial, convicted the prisoner of severely wounding the deceased on the head from the effects of which death ensued, and pronounced her liable to punishment by *tazeer*.

All the witnesses concur in stating that the prisoner was subject to fits of madness, which lasted for a few days, during which she used to talk a great deal of nonsense, but was never

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guilty of any acts of violence, and it had never been found necessary to subject her to any restraint while labouring under them. In the face of the evidence of the Civil Surgeon, I am inclined to consider this statement of the witnesses, who are relatives of the prisoner, as an attempt to extenuate her offence. The prisoner after arrest remained some time under charge of the doctor in the Lunatic Asylum, who recorded the following opinion in regard to her state of mind. "I did not consider her to be insane whilst she was in the Lunatic Asylum under my charge. She appeared to be a woman of violent temper. Her actions and words seemed to display anger at being, what she considered, unjustly detained." He added that she did not give him the idea of being a person subject to fits of madness.

I concur in the verdict of the Mahomedan Law Officer, and convict the prisoner of *culpable homicide;* and believing the crime to have been committed by her when laboring under a paroxysm of passion, would recommend that she be sentenced to imprisonment for fourteen years with labor in irons.

I regret to remark that considerable delay occurred in the preliminary investigation held by the Police. The case was not an intricate one, and the proceedings of the Police might have been conducted and finished in three days with ease. They extended over a period of eight days. Notwithstanding the crime was witnessed by a Police Officer,* it was not reported at the thannah for two days. It also appears to me a pity that the wounded woman, who survived eight days, was not sent in for medical treatment.

* Witness No. 4.

The charge is very carelessly worded. It ought to have been "wilful murder." The abstract in the Calendar is evidently the production of a person, who possesses a very limited and imperfect knowledge of the English language. If the Deputy Magistrate does not understand English, he should make out his Calendar in Bengali, and either forward it to the Magistrate's Office to be translated, or submit it in that language.

A copy of these remarks will be forwarded to the Magistrate, who is requested to convey the purport of them to the Deputy Magistrate of Manickgunge.

Resolution of the Nizamut Adawlut.—(Present: Messrs. G. Loch and H. V. Bayley.) No. 47, dated the 19th January, 1858.

The Court, having perused the papers above recorded, observe that the charge on which the prisoner has been committed for trial to the Sessions does not distinctly comprehend a criminal offence, for the *intent* of the prisoner in committing the crime, which is especially necessary to be charged in such a case as this, is not entered. As the charge at present stands the

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"grievously wounding" might have been the result of an accident. The charge should have expressed the *intent* of the prisoner to kill or to do some grievous bodily harm. The proper charge, however, under the circumstances was "wilful murder." The Officiating Sessions Judge on discovering the error of the Committing Officer should, as required by Circular Order of 14th November, 1851, No. 70, have returned the record to the Magistrate, and directed him to amend the charge, and recommit the prisoner.

The Officiating Sessions Judge finds the prisoner guilty of *culpable homicide*, and recommends a sentence of fourteen years' imprisonment with labor and irons. This finding is, under the terms of the charge on which the prisoner has been committed, incorrect, inasmuch as the conviction is for a *higher* offence than that charged in the Calendar, and for an offence for which the prisoner has not been put on her trial. The sentence proposed by the Officiating Sessions Judge as regards "irons" is also opposed to the rule laid down in Circular Order of 11th October, 1839, No. 31, (page 231 of Carrau's Edition) which prohibits the use of irons as regards female prisoners, except under particular circumstances. The Court therefore quash the proceedings, and direct the Officiating Sessions Judge to return the record to the Committing Officer, instructing him to recommit the prisoner on a proper charge, taking care that any further witnesses she may wish to call are in attendance. The Officiating Sessions Judge will then proceed to try the case *de novo*, taking a fresh defence from the prisoner, and re-examining her witnesses if requisite.

REGULAR CASES.

FEBRUARY,

1858.

REGULAR CASES.

FEBRUARY, 1858.

PRESENT:

J. S. TORRENS, ESQ., *Judge*, D. I. MONEY AND H. V. BAYLEY, ESQS., *Officiating Judges.*

GOVERNMENT

versus

SUKCHAND DHOOBY.

Rajshahye.

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The prisoner acquitted, the majority of the Court not considering, the circumstantial evidence against him, sufficient for his conviction.

CRIME CHARGED.—Wilful murder of his mother Goluckmonee Bewah.

Committing Officer.—Mr. C. E. Chapman, Officiating Magistrate of Rajshahye.

Tried before Mr. L. Jackson, Officiating Sessions Judge of Rajshahye, on the 15th December, 1857.

Remarks by the Sessions Judge.—The prisoner Sukchand Dhooby is charged with the foulest crime perhaps which man can commit, the deliberate and wilful murder of his own mother, for the sake of her property.

The evidence is altogether circumstantial, no eye having witnessed the commission of the deed, and no ear having heard the cry of the murdered woman. But on consideration I can come to no other conclusion, but that the murderer is the prisoner, her son.

The facts in evidence are these:

1*st.** That the prisoner was a man of dissolute and extravagant habits, having separated from his wife and living with a *Notteen*, and indulging in luxuries unusual with people of his class.

2*nd.*† That he was on bad terms with his mother, did not live in her house and had frequent quarrels with her, and that the old woman had money.

3*rd.*‡ That on the evening before the murder, the prisoner was met close to the southern door of his mother's house, and stated that she had fever, and was unable to eat, and that he had covered her up with a *kentha* or coverlet.

* Witnesses No. 6, Rutikant and others.

† No. 7, Madhub Bhoemalee.

‡ No. 5, Lunta Bhoemalee.
„ 7, Madhub ditto.
„ 8, Puddo Boistomee.

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4*th*.* That on the following morning, he was again at his mother's door directing the operations of two men who were ploughing some land of his. That on being asked he said his mother was better, but unable to move, and that he brought a *hookah* and tobacco from inside the house for the men to smoke.

* No. 5, Lunta aforesaid.
„ 10, Nitu Mundle.
„ 11, Oojir ditto.

5*th*.† That about noon of that day, the prisoner sent his son Bodun, to his mother's house to fetch a cloth which he had left there, when the boy found his grandmother lying dead with her throat cut.

† No. 13, Bodun Chokra.

6*th* ‡ That about two and half *prohurs* the same day, the chowkeedar met the prisoner near his mother's house, who told him without any expression of grief that his mother's throat had been cut and asked him what he was to do, that they both went to view the body which was lying covered with a sheet, that prisoner removed the sheet, so as to expose the wound.

‡ No. 12, Mongla Chowkeedar.

7*th*.§ That the deceased had her head nearly severed from her body, the blood congealed though not perfectly dry, having run over the floor down the door-step and over the threshold.

§ No. 4, W. White, Esq.,
„ 2, Buktar.
„ 3, Toriput.

The chowkeedar also states that in his rounds the preceding night, he first hailed the deceased at one and half *prohur* when he received the reply "jao" pass on, subsequently at two and half *prohur* on calling again, he heard nothing but a noise like clearing the throat.

It will be seen that whereas the boy *Bodun*|| says he was sent by his father to bring a cloth, the prisoner himself stated before the Magistrate that he sent his son to see where his mother had gone, upon which the boy made the discovery of her death, while before the Darogah he had said that he himself made that discovery having personally gone to see after his mother, these are important discrepancies.

|| Properly Badul.

There are three, and I believe only three conceivable ways in which the deceased could have come by her death.

I.—Suicide, death by her own hand.

II.—Murder, by strangers or thieves.

III.—Murder by the prisoner, her son.

The nature of the wound, with the whole circumstances, put the notion of suicide out of the question. Mr. White tells us that no person could with his own hands inflict such a wound,

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it being obvious that death or unconsciousness would ensue before the injury was half completed.

The Magistrate suggests considerations which make the supposition of murder by strangers highly improbable, but to confine ourselves to the matter in evidence, I think it must be said that such a theory is untenable, in the first place, there is not a suspicion or suggestion as to who the assassin, if a stranger, could be; next, if theft had been the object, murder would not have been necessary to a stranger. The old woman could have been easily overpowered or her property might have been removed without her knowledge; then at what time could the act have been committed by a stranger, not certainly in broad day-light with neighbours' houses close at hand, which is further shown by the fact of the blood being congealed. But if the act had been committed by others in the night, the prisoner, who was about his mother's house all the morning and brought tobacco from it, *must have become aware* of the fact, not merely from his mother's not moving, but because the blood must have been plainly visible trickling over the "*angina,*" and moreover, we have the prisoner's own declaration to the witness Lunta that his mother was better, indicating that he had ascertained her state at that time. But again, when the chowkeedar went with prisoner to inspect the body, he found it covered with a sheet. Now it is certain that if the murder had been the act of a stranger or common thief, the corpse would have been left lying as it happened to be when life left it and we should undoubtedly have had from the prisoner an account of the manner in which he found the body, and how he covered his mother's remains, but he tells us nothing of the kind, we are reduced therefore to the third supposition, viz.:

That the prisoner murdered his mother. Let us see whether such an act was likely, whether it is consistent with the circumstances that are known, and how far we are led to the belief by the prisoner's own words and actions. We have, in the first place, a palpable motive. The prisoner had expensive habits beyond his own means. His mother had money and goods. Years of alienation and constant quarrels had made this mother his enemy as well as the obstacle to his enjoyment of these advantages.

The great restraining influence, filial affection, being thus removed, is there any thing in the facts before us inconsistent with the belief that prisoner killed his mother? Is not rather his demeanour just what might have been expected from a degraded half imbecile yet cunning wretch as he seems to be who meditated and who had committed such a deed. He told the neighbours of his mother's sickness. He hovered contrary to his habit, about her door that night and the next morning.

But if the deceased had been suffering from fever, how is it

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that none of the neighbours knew it, that neither of the old Boistomee women who lived close by had been called in to see her, that she was left to the ministrations of her undutiful and estranged son.

There was deliberation manifest in the circumstances, the deadly nature of the wound inflicting instant and inevitable death, the concealment of the fatal weapon, all of which indicated preparation, an assured opportunity and leisure, and the prisoner's demeanour when met by the chowkeedar is quite inconsistent with the *sudden* discovery that his mother had just died a sudden and a fearful death.

One expression of the prisoner's is worthy of special noitce,—on being asked in the morning how his mother was, he answered "she is better (or the fever has left her); but she is motionless (or senseless.)" There is a horrible equivoque in this sentence worthy of an accomplished villain and fitly paralleled by the notion of sending his son, a boy of ten years old, to the house where the dead woman was lying, so as to make this unhappy child the means of divulging the fearful story.

It appears to me therefore that the prisoner designed his mother's death, and in the intention of destroying her had gone to her house in the evening before she died, that being met there by the witnesses Lunta and others he accounted for his going there by saying that his mother was ill. It is just possible that he may at that time have already committed the murder, it is also possible that the old woman may have been unwell so as to keep her in the house, but if the murder had been then committed, we must conclude that the reply to the chowkeedar's first hail was made by the prisoner himself, remaining in the house for that purpose.

It is probable that the deceased was murdered in the night and that the instrument of death was then hidden, as well as the several steps of digging, &c. to which the Magistrate refers, taken. That in the morning, watchful to prevent premature discovery and still uncertain what further course to take, the prisoner remained about the house, answering all enquiries, and procuring whatever was wanted from the premises.

That finally at mid-day when concealment could no longer be delayed, he derived the plan of sending his son to discover the body of the grandmother. It is remarkable that the prisoner has not throughout the case made any attempt to account for himself during the night of his mother's death or called any witness in his defence.

Before this Court he simply pleads *not guilty*, and urges the improbability of his killing the mother who bore him in her womb, but makes no statement and suggests no explanation of the tragedy.

The case was tried by a Jury of five respectable natives who

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have unanimously returned a verdict of *acquittal* which, however, I can scarcely think surprising. I have never seen a native Jury convict upon exclusively circumstantial evidence. They are so used to hearsay and conjecture, (which are matters too freely admitted in some of our trials,) that unless some two or three persons appear to give *their belief*, that the prisoner is guilty, they do not consider the accusation substantial, on this very trial the Jury man who acted as the mouth-piece for his fellows, actually said to me, "Why, none of the witnesses *have said* that *Sukchand* committed the murder!" It would have been useless to repeat to them what I had already explained, that this was for *them* to say, and not for the witnesses, at any rate I must dissent from the verdict and record my profound conviction that the prisoner is guilty, and the deceased could have met her death by no other hand but his.

I can recommend no other sentence in such a case but that of death. And so I leave the decision for a higher authority.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. S. Torrens, D. I. Money and H. V. Bayley.)

Mr. D. I. Money.—Both the Magistrate and the Sessions Judge appear to have most carefully considered all the circumstances connected with this murder.

The facts are stated by them, as they are found by the evidence, and this evidence, entirely circumstantial, has been weighed by them with all the attention so serious and difficult a case deserves.

It is not to be wondered at, that a native Jury in considering the evidence should be at fault. Where the conviction depends entirely upon circumstantial evidence, they are incapable generally of examining the train of circumstances, and giving due weight to each link that forms the chain.

The murder was committed in secret, and we have no direct evidence but that of circumstances.

Are these circumstances, as stated by the Sessions Judge, such as would necessarily attend the fact of the murder, and be inconsistent with any other conclusion than that the prisoner was guilty?

In all such cases the links in the evidence must be so connected, the chain of circumstances must afford such amount of proof, as would be inconsistent with the prisoner's innocence, and leave no doubt upon the mind of his actual guilt.

The chain is, I think, very complete. The mother's wealth, the character and position of the son, the previous differences between them, the prisoner's preventing his own child from sleeping at her house on the night of the murder, as he had been wont to do, his being seen and accosted that night near the house, the nature of his reply, his entering the house in the morning, when the murder must have been already committed,

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his equivocal answer regarding her health when questioned, the manner in which he communicated her death to the Police, and his defence at the trial, all raise a violent presumption of his guilt.

If I could believe from the evidence that it was possible, that the murder had been committed *after* the prisoner had brought the tobacco out of the house, I might come to the conclusion that all the facts above stated were not inconsistent with his innocence. But as I think it is clear from the evidence, that the murder must have been committed *before*, and as in that case blood must have been visible over the threshhold of the door, his entering the house and bringing out *tobacco* and a *chillum* for the *two Boistomees*, and giving out that his mother was better or in words strangely equivocal "*she remains silent*" or "*motionless*," such conduct on his part is inexplicable, except on the presumption that he was guilty.

This appears to me to be the strongest link in the chain of presumptive evidence against the prisoner.

The variations in the story given by the prisoner's son at the thannah and before the Magistrate and Sessions Judge rather strengthen than rebut these violent presumptions; and the slight discrepancies in the evidence of the witnesses Nos. 5, 6. and 7, as given before the Darogah and in the Lower Courts, are reconcilable with each other.

After duly weighing all these circumstances, I can come to no other conclusion, than that the prisoner is guilty of the murder, and would therefore sentence him to suffer death.

As cases of this nature are from the absence of direct and positive evidence the most difficult to deal with, inasmuch as a moral conviction of guilt is sometimes produced, where there is a doubt whether all the presumptions are such as to amount to conclusive legal proof, I shall be glad to have the concurrent voice of another Judge.

Mr. J. S. Torrens.—It appears to me, however strong the suspicions are against the prisoner, that none of the circumstantial evidence on which the Judge has formed his conviction is sufficiently clear or connected, to warrant our concurrence in the conviction. The case is one of those which whilst there is every reason to incline to the conclusions to which the Magistrate and the Judge have arrived, there is the want of any train of evidence either circumstantial or otherwise which could be considered sufficient to find the prisoner guilty. I therefore have to come to the same opinion as that formed by the Jury who tried the case along with the Judge, and I would acquit the prisoner from want of proof.

Mr. H. V. Bayley.—In this case the Sessions Judge would convict. The Jury would acquit. On a reference to this Court, Mr. Money would convict, and Mr. Torrens acquit.

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The record has come to me for a third voice.

The Medical Officer deposes that the deceased had her head nearly severed from her body, that death must have been instantaneous, and could not have been caused by her own hand.

There is no direct evidence against the prisoner; no weapon or property has been traced connecting him with the murder.

The case against the prisoner rests mainly on the circumstances stated in the 4th, 5th, and 6th paras. of the Judge's letter.

It is to be seen first whether the evidence to those circumstances is consistent and trustworthy; and next, if it be so, whether the circumstances are such as to admit of no other reasonable conclusion than that the prisoner committed the murder.

The chief circumstance alleged, as connecting the prisoner with the murder, is that of his having been seen near the deceased's house about the midnight preceding the discovery of the murdered body. The witnesses to this circumstance are Lunta, Rukeekunt and Madub Dutt. The statements of these three at the Police were recorded as one statement. It is there recorded that they said that it was a dark night, and the prisoner was not at first recognized, but that he came out from deceased's *kirki* door. Lunta to the Magistrate says, he does not know whether prisoner came out of the house of deceased or whence; that it was dark, and that he did *not* state to the Police that he had seen prisoner come out of the house of the *deceased;* he adds that prisoner was seen by him fifteen or sixteen cubits off *that* house. This witness states at the Sessions that he saw the prisoner fifteen or sixteen cubits off his, *prisoner's* house. But this is reconcilable, as it is proved that prisoner's and deceased's houses are within a *beegah* or two of each other. The next of these three witnesses, Madub, states to the Magistrate and Judge that he did not *see* prisoner on the night in question, when he, Lunta and Ruteekunt were together, but thought it was prisoner's voice. Ruteekunt also deposes that he did not *see* prisoner; that it was a dark night; and to the Sessions Judge, he states that the voice was *like* that of prisoner. Looking at the character of the above evidence, I think it insufficient satisfactorily to prove that prisoner was on the premises of the deceased at that hour of the night before the murdered body was discovered, which is deposed to. The evidence as to the sound of a moan that night is of little worth. The witnesses cannot say whether the sound was of a human being or cattle; and the evidence of the Medical Officer is clear that death must have been instantaneous, and that a person wounded as deceased was, "would not have been able to cry out."

There still remain many very suspicious circumstances against the prisoner. His enmity with his mother and his disputes with her about property are proven. It is proved that next

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morning he told Lunta in reply to his enquiries about the deceased that she was better. In order to give this reply he must have seen deceased or answered Lunta without seeing her, and if he did see her, he would, it is presumable, have seen she had been murdered. There is evidence that he went to his mother's house that same morning to fetch tobacco. It is a strong presumption that he then saw that she was murdered, although it is not directly shewn that he did. But he did not then mention to any one that he had seen her murdered. The prisoner's information to the Police was that *he* had found her murdered. To the Magistrate he states that he sent Bodun *his son*, to see where she was. Bodun states that his father sent him to the deceased's home to get a cloth ; and he found the corpse. Bodun's deposition *on oath* is only taken at the Sessions. He says he went to sleep at deceased's, on the night of the murder, but did not sleep there, owing to deceased having abused him. He also deposes to the Judge that he used to sleep, and eat, and be, at his father's. In Bodun's statement to the Magistrate, it is not recorded that he deposed on oath or made a Statement under Section 15, Act II. of 1855.

I think there is not that amount of proof from the circumstantial evidence, as to lead to the conclusion that no other than prisoner committed the murder, and I would therefore acquit him.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT

versus

BISSUN CHUNDER BABOO (No. 6.)

East-Burdwan.

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Case of BISSUN CHUNDER BABOO.

The prisoner acquitted on the ground of insanity. Remarks upon the conflicting nature of the medical evidence. The Court with reference to the opinion expressed by Taylor in his Medical Jurisprudence, vizt. "That the true test for irresponsibility in ambiguous cases appears to be, whether the individual, at the time of the commission of the crime, had or had not *a sufficient power of controul to govern his actions,*" looking at the act of the prisoner by this test, his antecedent and subsequent conduct in

CRIME CHARGED.—Wilful murder of Puddu Chashani.

Committing Officer.—Mr. H. B. Lawford, Officiating Magistrate of zillah East-Burdwan.

Tried before Mr. H. M. Reid, Officiating Sessions Judge of East-Burdwan, on the 30th December, 1857.

Remarks by the Officiating Sessions Judge.—This case was commenced on the 31st March last, but was ordered to stand over as the prisoner, when brought up for trial, at first stood mute and then only muttered a few incoherent words, and could not be induced to plead, and as it appeared from an examination of the Foujdary papers that previously to, that is to say, on the day before, the case being committed for trial, the prisoner's son had petitioned the Magistrate to the effect that his father was of unsound mind prior to the occurrence of the crime, and praying that the Magistrate would make enquiry into the subject. The Magistrate did not, however, comply with the prayer contained in the petition. The Court therefore directed the Magistrate to complete the necessary enquiry in the manner pointed out by the Nizamut Circular Order of the 11th February, 1825, and also to make enquiry as to the prisoner's state of health through the Medical Officer then in charge of the station (Baboo Oomachurn Sett, Sub-Assistant Surgeon,) and, if necessary also, through his successor Dr. Williams, whose arrival was shortly expected, and on completion of his enquiry, and on the prisoner being in a sufficiently sane state of mind to undergo his trial, the Magistrate was to communicate to the Court to that effect. These orders having been carried out, and the prisoner having been reported, by the Medical Officer in charge of the Insane Asylum at Dullundah, under whose charge he had lately been placed, to be in a fit state of mind to undergo his trial, he was again brought before the Court on the 18th December.

The prisoner on being called on to answer to the charge, merely muttered a few words to the effect that he was the Maharajah of Burdwan, and Baboo Nobokishen Mookerjee, a Pleader of the Sudder Court, having been nominated by me to conduct the prisoner's defence recorded a plea that the prisoner was "*not guilty,*" and that he was of unsound mind at the time when the act charged against him was committed.

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connection with it, the Monomania that he was the Maharaja of Burdwan, the apparent motive influenced by the Monomania, and with special advertence to the testimony of the Civil Surgeon of the station, who maintained that the prisoner was insane, held, that the prisoner had not at the time when he *committed* the fatal act, that *power of controul* over his actions, which a man of sound mind possesses, and therefore acquitted him, and directed him to be kept in safe custody under the provisions o' ction III. A IV. of 1 9.

The details of the case are as follows. Nundlal Chowkeedar* (witness No. 1,) was sitting at the Peerharan Phanree at about seven *ghuntas* of the day (7 A. M.) of the last *Sursuttee Poojah* (30th January, 1857,) when a woman, whom he did not know, who was passing the Phanree told him that the prisoner Bissen Chunder Baboo was beating some one at his house. Upon this, he by order of Hingun, Jemadar (witness No. 2,) who was also at the Phanree, went to see what was the matter, and on reaching the prisoner's house, he saw him sitting on the deceased, who was his mistress, and in the act of striking her with a *katarce.* Upon the witness threatening him, the prisoner went and sat down on his bed. The witness called to the Jemadar, who coming to the spot told him to go and give information to the thannah, but, before he could return to the prisoner's house with the thannah Mohurrir, the Deputy Magistrate Baboo Poornoo Chunder Banerjea had himself arrived there, and had commenced making an investigation into the case, and had bound the prisoner, after the weapon, with which the wounds had been inflicted, had been wrested from him.

* Wit. No. 1, Nundlal, Chowkeedar.
» » 2, Sheikh Hingun, Jemadar.
» » 3, Nundlal Pandeh.
» » 4, Nobokisto Ghose, Mohurrir of the Magistrate's Office.

The wounded woman was at once sent to the Hospital where she died about three hours afterwards, but before her death she recorded a dying deposition which has been duly attested,† and which is to the effect that the prisoner struck her the first blow with the *dao* while she was asleep, and that on her waking he repeated the blows, and that he did this without her having given him any cause for doing it.

† Wit. No. 4, Nobokisto Ghose.
» » 5, Sheikh Ramjan.

The prisoner on being arrested confessed‡ before the Deputy Magistrate that he had killed the deceased because she did not wish to remain with him any longer, but to go to some one else. He repeated his confessions but in varied forms, in two subsequent occasions, in one of which§ he told the Jail Darogah (witness No. 26,) that he had killed the deceased because she had done something to annoy him, and on the other,|| he told witnesses Nos. 22 and 56, that he and the deceased had been drinking together, and that deceased had sat down on his face, or, as the witness No. 56 ex-

‡ Wit. No. 4, Nobokisto Ghose.
» » 5, Sheikh Ramjan.

§ Wit. No. 26, Mr. J. W. Angus.

|| Wit. No. 22, Baboo Sreenath Mookerjee, contracter of the Dullundah Insane Hospital.
» » 56, Muthoormohun, Naib Jemadar of ditto.

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presses it, had placed her private parts on his face, upon which he being enraged had wounded her, but whether fatally or not he did not know.

The result of the *post mortem* examination* shews that the head, forehead and face of the deceased were completely covered with wounds inflicted with some heavy cutting instrument such as the *kataree* found on the spot, and that the wounds were the cause of death.

* Wit. No. 4, Nobokisto Ghose.
„ „ 5, Sheikh Ramjan.
„ „ 8, Baboo Oomachurn Sett, Sub-Assistant Surgeon.

It appears from the evidence of one of the witnesses† for the prosecution, who have been examined as to the prisoner's state of mind prior to the committal of the murder, that he was of sane mind at the time in question, while others have deposed that they cannot say whether he was mad or not. Some of the above witnesses have deposed that the prisoner used to go by the name of the "*khepa* Baboo," and that he used to be continually singing and shouting. The evidence of most of these witnesses is materially descrepant from that given by them in the Foujdary Court and not much weight can be given to it, the witnesses being persons of a very low status.

† Wit. No. 11, Monmohinee Bewa.
„ 12, Runjoo Debia Boistomee.
„ 13, Brahmo Koomarmee.
„ 14, Hurroo Bewa.
„ 15, Munnoo Beebee.
„ 18, Hurree Roy.
„ 19, Nuffer Ghose.

From the evidence of Dr. Cantor,‡ Superintendent of the Dullundah Insane Asylum, under whose charge the prisoner remained from the 21st August to the 1st December, 1857, as well as from that of two of the subordinate officers of that Establishment (witnesses Nos. 22 and 56,) it appears that during the time the prisoner remained at Dullundah he exhibited no symptoms whatever of insanity, but that he feigned insanity, and pretended in the presence of Dr. Cantor that he had lost the use of his legs, and would only mutter a few words to the effect that he was the Muharajah of Burdwan. Dr. Cantor however ascertained by the appliance of splints that the prisoner had *not* lost the use of his legs, and the witnesses Nos. 22 and 56, have proved that the prisoner at times when the Medical Officer was not present could walk and talk just as well as any one else, and also that he confessed in their presence to having wounded the deceased.

‡ Wit. No. 21, Dr. Theodore Cantor, Superintendent of the Dullundah Native Insane Asylum.
„ „ 22, Baboo Sreenat Mookerjea, contractor of ditto.
„ „ 56, Muthoormohun, Naib Jemadar of ditto.

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The defence set up is, that the prisoner was insane when he committed the crime charged. In support* of it, the son of the prisoner, Boidonath Baboo, (witness No. 24,) has deposed that his father has been of unsound mind for the last three years, and that in the month of Bhadun 1263, (August 1856,) on his (witness) going to him to ask him to take some food, he having been fasting for four days previously, he abused him for not treating him with proper respect as the Muharajah of Burdwan and pushed him into a well, and nearly drowned him, and threw a stone at him while he was in the well, he, witness, being rescued with great difficulty by the neighbours. This evidence is supported by that of Baladeen Jemadar, witness No. 29, who is in the employ of the father-in-law of witness No. 24, but no intimation of the occurrence was made to the Magistrate or to the Police, and no proper steps were taken to secure the prisoner's future safe custody. The witness No. 24, further states that his father was in the habit of imitating the voice of drums, dogs, cocks and jackals, and that on one occasion he petitioned the Magistrate to the effect, that witness and his father-in-law owed him three to three and half lacs of rupees. Witness No. 31, Neamut Baboo deposes that the prisoner was in the habit of making noises, like cocks, calling out *Ho Ha*, dancing naked, &c. and that he was not in his proper senses for about two and half years prior to the murder. Witness No. 34, Dhunna Bewa deposes to his having become *daft* about two years ago, and to having before that been in a good state of health. Witness No. 58, Muneelal Misree, a native doctor or *Hakeem*, deposes to having attended the prisoner for four months from Assin 1263, and to having given him medicine and rubbed some ointment on his head, and that he was then in a *khapa* or mad state, though he was at times sensible. Witnesses Nos. 57 and 59, depose to their having conducted two separate investigations, the former in the month of November, 1856, and the latter in the month of January, 1857, regarding claims advanced by the prisoner, and to their having respectively reported to the Darogah that the prisoner was *not* in his right senses; and it appears from an order passed by the Deputy Magistrate on a petition presented to him on the part of the prisoner in the month of January, 1857, that the Deputy Magistrate sent it in to the Magistrate with a remark that the petitioner was "*oonmad*" (উন্মাদ) or a perfect mad man.

Dr. Williams, Civil Assistant Surgeon of Burdwan, witness No. 25,† under whose observation the prisoner was placed from the 20th May to the

* Wit. No. 24, Boidonath Baboo.
" " 29, Baladeen Jemadar.
" " 31, Neamut Baboo.
" " 34, Dhunna Bewa.
" " 58, Muneelal Misree.

† Wit No. 25, Dr. H. F. Williams, C. A. Surgeon.

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21st August last, has given it as his opinion that the prisoner was not in a sound state of mind during the period in question, and since his return from Dullundah Insane Asylum he considers him to be much in the same state of mind as before he went there. Dr. Williams is further of opinion, from a perusal of the evidence and from hearing some of the witnesses examined in his presence, that the prisoner was not of sound mind when committing the murder. He cannot, however, depose to the exact phase of insanity, or as to whether it was such as to render the prisoner insensible that he was doing a wrong act when committing the crime. The particular symptoms of the prisoner's unsoundness of mind which Dr. Williams has deposed to as having come under his personal observation are, that he was always exceedingly taciturn, that he stated himself to be the Maharajah of Burdwan, and did not appear to take any notice of his caste. Also that his general bearing was that of a person of unsound mind. Dr. Williams also founded his opinion partly on the reports of his subordinates, but none of those individuals have been called for as witnesses on the part of the prisoner excepting the late Jailer, Mr. Angus, witness No. 26,* whose evidence tends entirely to overthrow the plea of insanity which has been set up. Mr. Angus has deposed to the prisoner having been very much excited when first brought to the jail, and to his having, on a subsequent occasion, been very violent. On the other hand he has deposed to his having been particular about his caste, and to his having been in the habit of freely conversing with him until he was first sent up to the Sessions Court for trial in the month of March last, since when he left off speaking to him. This witness also deposes to the prisoner having confessed to him that he had committed the murder.

* Wit. No. 26, Mr. J. W. Angus, late Jail Darogah.

Of the remaining witnesses, who had been cited for the defence, one of the number, the prisoner's eldest son (witness No. 23,) was not in attendance, and the Counsel for the defence declined examining the others.

Two of the Jury (Baboo Brijnath Chowdry and Rakhaldas Sircar) acquit the prisoner of the crime charged, on the ground of insanity. The third juror, Moonshee Zahadally convicts him of wilful murder.

I am unable to concur with the majority of the Jury in their verdict of acquittal. I do not think any reliance can be placed on the evidence of the witnesses Nos. 24 and 29, regarding the prisoner having pushed the first named witness into the well, and the evidence which has been adduced of his having previous to the commission of the crime, been in the habit of singing and shouting, dancing naked, and imitating the noises of dogs,

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jackals, cocks, &c. has not been corroborated by the evidence adduced as to his subsequent behaviour while in jail. The evidence of the witnesses Nos. 57 and 59, and the order passed by the Deputy Magistrate on the prisoner's petition which was presented to him a few days before the murder occurred would certainly tend to show that the prisoner was at that time more or less in an unhealthy state of mind, but it is clear from the evidence of witness No 26, (Mr. Angus, the Jail Darogah) that the prisoner was in full possession of his senses from the date when he was brought to jail (30th January, 1857,) up to the date of his being first brought before the Sessions Court for trial (31st March, 1857,) and it is equally clear from the evidence of witnesses Nos. 21, 22 and 56, that the prisoner was not insane, but that he was feigning insanity while in the Dullundah Insane Asylum from the 21st August to 1st December, 1857. During part of the intervening time between the 31st March and 21st August, (that is to say, from 20th May to 21st August) there is the evidence of Doctor Williams to show that the prisoner was not in a healthy state of mind, but on a full consideration of the evidence of the witnesses Nos. 26, 21, 22 and 56, I can arrive at no other conclusion than that the prisoner must have been feigning insanity to a greater or less extent during the period that he was under Dr. Willams' observation. Taking Dr. Williams' evidence into due consideration, in conjunction with that which has been adduced for the defence to support the plea of insanity, I am of opinion that it has not been proved that the prisoner was in such an unhealthy state of mind as to render him insensible that he was doing an act forbidden by the law of the land when committing the murder. I would convict the prisoner of wilful murder. There is no apparent cause for the committal of the deed, and it is not shewn that there was any previous quarrel or enmity between the prisoner and the deceased. Indeed the latter had been living with the prisoner for the last two years as his mistress. Moreover the murder was committed at an hour of the day (7 A. M.) in a house situated on a public thoroughfare, and under such circumstances generally, as would have rendered concealment of the crime next to an impossibility, I am strongly inclined to believe, therefore, that the murder was made not a premeditated one, and being of that opinion, I think that the prisoner should not be sentenced capitally, but be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The circumstances of this case have been fully detailed by the Sessions Judge.

There is no doubt whatever, so clear and consistent is the evidence, that the prisoner committed the act with which he is

charged, but I have very great doubt whether he was of sane mind when he committed it. 1858.

He has been defended by Mr. Norris upon the ground of insanity. February 18.

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In coming to a conclusion upon this point, it would not be safe to place too much reliance upon the evidence of the native witnesses, who were examined on the trial, regarding the state of the prisoner's mind, although it would appear from their statements that he went by the name of "the mad Baboo," and was at times very strange in his conduct, that he considered himself the Maharajah of Burdwan, and on one occasion pushed his son into a well for not treating him as such with sufficient respect, and on another lodged a complaint as Maharajah, in which he stated, that his son accompanied with several others attacked his house, and robbed him of three and half lacs of jewels, &c. whereas upon enquiry it was ascertained, that the whole of his property amounted only to 10 Rs It is on the record that when this plaint was preferred on the 22nd January, 1857, only eight days before the murder, the Deputy Magistrate wrote on the back, that as the petitioner was "stark mad" the petition was to be sent to the Magistrate for such orders as he might think proper to pass. I do not lay much stress on the fact of the son giving no intimation to the Magistrate or the Police of his father's conduct to him, as he would naturally be averse to expose it.

Then there is the testimony of the native Doctor who attended him for some months.

But the doubt which all these facts and all this evidence create is increased tenfold by Dr. Williams' testimony, and that doubt is not removed by the subsequent testimony of Dr. Cantor. The evidence of these two gentlemen is of the greatest importance.

Dr. Cantor states, "I have been close upon two years Superintendent of the European Insane Hospital at Bhowanipore, and of the Native Insane Hospital at Dullundah. The prisoner at the bar was sent to me for treatment to the latter Asylum on the 21st August last, and he was discharged therefrom on or about the 1st December (instant). From the date of his admission to the date of his discharge the prisoner Bisunchunder Baboo, has shewn no symptoms of insanity but a strong determination to feign insanity. Throughout, he pretended to have lost the use of his legs, and that he could neither stand nor walk. Having satisfied myself that there was nothing the matter with the legs, my judgment was further corroborated by appliances, and by making him walk and run, when compelled by two servants of the Hospital. In my presence he generally continued obstinately silent, but, when he was compelled to exercise his legs, he would suddenly abuse the servants and

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threaten them with violence. I saw the prisoner at least once a day during the period that he was in the Asylum; but being suspected, I kept him under continual surveillance; and it was the duty of my subordinates to report to me what the prisoner did, and their reports further confirmed my opinion that he was not of unsound mind during his detention for observation in the Asylum at Dullundah, I know nothing of the man's previous state of mind, before he was sent to the Asylum, no report regarding him having reached me; and I have therefore studiously described only what came under my observation during the period of his detention in the Asylum, viz. between the 21st August and the beginning of December.

Q.—Did you see him on the first day of his arrival and in what state was he then?

A.—I am not prepared to answer whether I really saw him on the first day of his arrival. It would depend on whether he arrived in the morning or in the evening. My impression is that I did see him the first day. On that day, I could not form any opinion as to the state of his mind. He was admitted for observation and I expected that he was labouring under insanity, till protracted observation convinced me that he was not.

Q.—What, in your opinion, are the principal characteristics of insanity, mental and physical?

A—Your question is so vastly comprehensive that it would take me a very long time to answer it, and it would require a very much larger acquaintance with the subject than, I fancy, the Counsel for the defence possesses of it, to enable him to understand my answer when given. The question implies of the nicest points Psychology, Pathology, and other branches of science.

Q.—Be so good as to give the ground for your having formed the opinion that the prisoner is not of unsound mind?

A.—They were formed partly from my own observation, and partly from that of servants of the Asylum, whose business it was most narrowly to watch him. These details, which were reported to me, have already been embodied in my letter* to the Magistrate of the 24-Pergunnahs which is before the Court, and my subordinates, who watched the prisoner, have already attended the Court, and have given their depositions.

Q.—Will you state some details of the conversation, alluded to in the latter part of the 4th para. of your letter, where he muttered a few words to the effect that he was the Rajah of Burdwan?

A.—I heard him mutter a few words in Hindoostance, and on asking my subordinates what he said, they replied that he

* No. 253, of 1st December, 1857.

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stated himself to be the Rajah of Burdwan, but of this I have but a very imperfect impression.

"*Q.*—Can you say whether the prisoner is still insane?

"*A.*—I cannot depose on the subject, merely from seeing him for a short time in Court to-day. All I can depose to is that while under my observation from the 21st August to the 1st December, 1857, he was throughout in a sane state of mind."

Dr. Williams' statement, when examined, is as follows:—

"In the month of May last the prisoner Bissun Chunder Baboo was placed under my observation, and he was for a considerable time in the Hospital, during which period I carefully observed him during my daily visits. I also made several enquiries from the native Doctors and attendants as to his general habits, &c. He was discharged from the Hospital to the jail where I was in the habit of frequently seeing him. The conclusions which I drew from the above observations were, that the prisoner was not of sound mind.

"*Q.*—What grounds had you for drawing the above conclusions?

"*A.*—From his general bearing on all occasions on which I saw him, and from the reports made to me regarding his conduct during my absence.

"*Q.*—What particular symptoms of unsoundness of mind did he exhibit?

"*A.*—He was always exceedingly taciturn. He stated in Hindoostanee that he was the Maharajah of Burdwan, and at the same time did not appear to take any notice of his caste. I was also informed by the native Doctor that he sometimes was in the habit of drinking the water which he used on the occasion of washing himself after defecation. He could never be induced to give any reply to my questions, and in order to compel him to do so, I threatened him with the application of blisters if he would not inform me whether his head ached or not. On applying or attempting to apply a liquid blister, he became much infuriated, and endeavoured to strike the attendants.

"*Q.*—How long did he remain under your observation?

"*A.*—Up to the period of his transmission to Alipore in the month of August last.

"*Q.*—Did you write to the Magistrate on the 10th June last, giving your opinion of the prisoner's then state of health?

"*A.*—Yes, I was then of opinion that he was of unsound mind.

"*Q.*—Have you, since the prisoner's transmission to Alipore, and his return therefrom, had any reason to change the above opinion?

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" *A.*—Since the prisoner's return I have seen him several times and he appears to me to be in much the same state as before he went with the exception of being reduced.

" *Q.*—Are you still of opinion that the prisoner is of insane mind?

" *A.*—From his antecedents, and the evidence of the witnesses in Court, as well as the open manner in which the murder appears to have been committed, coupled with my observations of him since first seeing him, I am of opinion that the prisoner is not of sound mind.

" *Q.*—From a perusal of the evidence, and from hearing that of other witnesses who have been examined in your presence, can you form any opinion as to what was the prisoner's state of mind at the time of his committing the murder?

" *A.*—I am strongly inclined to believe that at the time of the committal of the murder the prisoner was not of sound mind?

" *Q.*—Is it possible that he may have recovered his reason after going to Alipore?

" *A.*—It is difficult for me to state to what amount he might have recovered his reason.

" *Q.*—Did you prescribe for the prisoner, or give him any medicine while he was in Hospital?

" *A.*—With the exception of the application of blisters I did not give him any medicine more than on two or three occasions at most, but on this point I am not quite positive.

" *Q.*—Did the prisoner make any noises of dogs, jackals, cocks &c. while under your observation?

" *A.*—No, not in my presence, or to my knowledge.

" *Q.*—From what you have heard of the evidence, do you think that the prisoner was of such an unsound state of mind, when committing the murder, as to render him insensible that he was doing a wrong act?

" *A.*—I cannot depose to the exact pleas of insanity, but I am of opinion that the prisoner's mind was then not in a healthy state; keeping his antecedents in view as well as the evidence of the witnesses, coupled with my after observations.

" *Q.*—At the time the prisoner was under your observation was his madness of such a description as to make him insensible of what was going on around him?

" *A.*—I cannot positively speak as to the above."

These conflicting opinions render it difficult for the Court to come to a conclusion regarding the sanity of the prisoner, and whether he was responsible for the act he committed.

A man might be suffering from monomania, and yet be perfectly conscious that at the time of his committing an offence he was guilty of a criminal act, that is to say, the defendant might consider himself the Maharajah of Burdwan, and yet know that it was criminal to cut the throat of his paramour, or

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he might be mad at the time of committing the murder, and yet recover his sanity by the confinement of a jail, by regular diet, from the absence of stimulants, or any thing to excite the passions. The only manner in which the discrepancy in the medical evidence can be accounted for is, that the madness in the psychological scheme of one Doctor is different from that of another. The obstinate silence maintained in the presence of Dr. Cantor is not to be taken as an evidence of the prisoner's sanity. The prisoner, who could consider himself as the Maharajah of Burdwan, might consider Dr. Cantor as something more or less than his identity, and refuse to speak to him. The evidence before the commission of the act is much more important than that taken after. As to the splint test, it does not appear from Dr. Cantor's evidence in what mode it was applied, nor the result. The details of such a test should have been given *in extenso*, as the conclusions drawn from them by one person might very fairly differ from those drawn by another. The fact that the prisoner was made to walk is no proof, if monomania on that point existed, that he knew or thought that he could do so. It does not, however, appear from the evidence of the contractor and Naib of the Insane Hospital that the prisoner pretended, as Dr. Cantor states, to have lost the use of his legs. They both state that the prisoner when questioned upon this point answered, that he never *stood before the Judge or Magistrate*, and the latter witness gives an explanation, which should have been given by Dr. Cantor, of the mode in which the splint test was applied. He states as follows: "Because the prisoner never stood before the Doctor, wooden fetters were put to his feet, and, as long as he was put in fetters, so long he would remain standing before the Doctor, but as soon as the fetters were removed he would sit down again; after the departure of the Doctor he would retire to the room, and there take his seat; two persons having held him fast on two sides used to make him stand before the Doctor, when his legs were put in stocks. After they were removed the prisoner used to sit down immediately."

When pressed for an explanation of the grounds on which he formed an opinion, that the prisoner was feigning madness, it was not competent to Dr. Cantor, as a witness, to refuse to give the grounds, because the Defendant's Counsel was not learned enough to understand him. The prisoner's life depended on the evidence, and, though his Counsel might not be able to understand the learned Doctor's remarks regarding his psychological researches, still they might have been understood by the Judge, and if a doubt should have existed in the Judge's mind, there were other medical authorities available, to whom any important point might have been submitted. The stake was too serious to pass by in such a manner, and the point mooted by

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the Judge should have been insisted upon, more especially when there was such difference in the medical testimony.

Mr. Norris has called the attention of the Court to the circumstances attending the commission of the act, as consistent with the prisoner's previous irrational conduct, and showing that he was not of sound mind at the time. There was certainly no premeditation. No real provocation. No apparent motive. No attempt at concealment, or to remove the slightest indication of his guilt. But all this is quite consistent with sanity of mind. Murderous assaults of a similar character have been frequently committed under such circumstances They become of great weight and have an important bearing upon the subject, when there is other evidence, as in this case, to lead to the conclusion, that the prisoner was not in his proper mind when the act was committed.

Mr. Norris has referred to the usual medical tests in such cases, which are analysed by Taylor in his work on Medical Jurisprudence, page 855, 5th Edition, viz. absence of motive, immediate confession, and having no accomplices, and argued that these criteria, taken in connection with the evidence on the record, sufficiently prove that the prisoner was not of sane mind when he committed the act.

These tests, as Dr. Taylor most ably and clearly shows, are uncertain and not to be depended upon. He sums up, that there are no *certain legal or medical rules* whereby homicidal mania can be detected, and that each case must be determined by the circumstances attending it. He adds, however, that, "the true test for irresponsibility in these ambiguous cases appears to be, whether the individual, at the time of the commission of the crime, had or had not a *sufficient power of controul to govern his actions*."

Looking at the act of the prisoner by this test, taking his antecedent and subsequent conduct in connection with it, the monomania that he was the Maharajah of Burdwan, which appears to have clung to his mind like the skin to his body, the motive which he himself ascribes, which was influenced evidently by the monomania, viz. that the woman had sat upon his face, and so disgraced him, and with especial advertence to the evidence of Dr. Willams, who has adhered throughout to the opinion that the prisoner is insane, I can come to no other conclusion than that he had not, at the time when he committed the fatal act, that power of controul over his actions, which a man of sound mind possesses, and I therefore acquit him of the crime, and direct that the Sessions Judge report the case for the information of the Government and keep the prisoner, under the provisions of Section 3, Act IV. of 1849, in safe custody, until the pleasure of the Government be known.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

JAMES L. ANLEY

versus

KALLIKOOMAR DOSS.

East Burdwan.

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Appeal rejected. Held, that although there was not a carefull system of accounts and checks in the department immediately under the prisoner's controul, this was no ground of justification or palliation. There was sufficient evidence to prove that the prisoner had charge of the Cash Box, and kept the Cash Book, and there was a strong presumption that the false entries in the Cash Book were effected by him, or through his agency, inorder to cover appropriations of money in the Cash Box.

CRIME CHARGED.—1st count, embezzlement between the month of November 1856 and 18th September 1857 of Rs. 2,507-0-7, the property of the East India Railway Company and appropriating the same to his own use, the prisoner being employed at the time as an accountant by the aforesaid Company, and the money being in his custody by virtue of his holding the above situation; 2nd count, theft of Rs. 2,507-0-7, the property of the East India Railway Company, the prisoner being employed at the time as an accountant by the aforesaid East India Railway Company. Perpetrated between November 1856 and 18th September, 1857.

CRIME ESTABLISHED.—Theft.

Committing Officer.—Mr. H. B. Lawford, Magistrate of East-Burdwan.

Tried before Mr. H. M. Reid, Officiating Sessions Judge of East-Burdwan, on the 17th December, 1857.

Remarks by the Officiating Sessions Judge.—The prisoner pleaded "*not guilty.*" From the evidence for the prosecution it appears that the prisoner was the accountant and Head Writer of the Railway Engineer's Office at Burdwan, and in that capacity he kept the cash book and the key of the treasure-chest, and that all disbursements were made through him. That on the 13th or 14th of September last, the prosecutor's attention having been attracted by two alterations which were apparent in No. 921 and 938, of a balance-sheet of Indent (document No. 28, which is filed in the case) he was led to make further enquiries, the remarks of which shewed that several original bills, duplicate bills, duplicates of cheques, and other office accounts had been so altered as to make it appear that much larger sums had been disbursed, and that there was consequently a much smaller amount of cash in hand, then ought in reality to have been the case. On ascertaining these circumstances, the prosecutor Mr. Anley, after having asked the prisoner to account for the manner in which the alterations and erasures had occurred, and having been informed by him in reply that he knew nothing at all about them, proceeded on the 17th September to count the contents of the cash box which he found to amount to Rupees 7,235-1-11 for which sum he gave the prisoner an acknowledgment, the prisoner giving him a

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duplicate thereof under his own signature on striking a balance, Mr. Anley at first found, on a rough estimate, that there was a deficiency of about Rupees 2,800, but, on more detailed investigation he arrived at the conclusion, that the sum actually missing was less, viz the amount stated in the indictment, Rupees 2,507-0-7. The usual mode of paying out money in the Railway office was as follows. On a bill for work done being sent in by an Inspector, Mr. Anley after examining the *rates* at which the different included items were charged for, and ascertaining that they were correct attached his initials to the bill which was thereupon sent into the office in order that the *calculations* might be duly checked, and, on this being done, it was the duty of the prisoner to prepare and present for Mr. Anley's signature a pay order for the amount. A duplicate of the pay order was kept unsigned in the office (in the same manner as duplicate cheques are kept in a cheque book,) the original pay order, and a copy of the bill being sent to the Inspector, who signed the former on the back as a receipt for the money, the Inspector then either receiving the money himself or drawing out pay orders in favour of the parties to whom the component items shewn in the bill were due, and forwarding them together with the receipted pay order and the copy of the bill to Mr. Anley's office who, upon that, caused the money to be paid, the duplicate of the bill being retained as a voucher in Mr. Anley's office, and the original thereof being sent to the Railway Company's office in Calcutta.

It appears from the evidence* and the exhibits filed in the *nuthee* that on several occasions both the original bills, as well as their duplicates had been tampered with, larger amounts being shewn in them as expended on particular items, than the entries in the original bills warranted, and the totals being altered in a corresponding manner, that the original pay orders have been altered in like manner after having been signed by Mr. Anley, and that the *unsigned* duplicates thereof have also been altered in the same way, the cash account having also been similarly tampered with. In some instances, however, only the duplicate bills and the

* Wit. No. 1, Ishur Ghose.
" " 2, Mr. Rickee.
" " 3, Starbrook.
" " 4, Takoordoyul.
" " 5, Sonaollah.
" " 6, Sodut Sheik.
" " 7, Mobaruk Sheik.
" " 8, Kuseemoodi Chupprassee.
" " 9, Madupdoss Chupprassee.
" " 10, Goyumoni.

Documents.

Mr. Rickee's account cheque No. 15, 11th August, 1857.
" 21, 11th "
Bill of 20th July 1857.
" 31st " No. 1.
" 31st " " 2.
" 31st " " 3.
" 31st " " 4.
" 31st " " 5.
" 31st " " 6.
" 31st " " 7.
" 31st " " 8.

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Bill of 31st July, No. 9.
" 31st " " 10.
" 31st " " 11.
" 31st " " 12.
" 31st " " 13.
" 31st " " 14.

Mr. Pendhoe's account cheque. Nos. 6, 43 and 44.
8 Bills for July 1857.

Mr. Starbrook's account cheque. Nos. 58 and 24.
3 Bills for July 1857.

Mr. Anley's account books 3 pay order books from 14th July to 10th October 1857.
6 cheques Nos. 14, 16, 17, 18, 33, and 36,

Statement shewing the alterations made in the Bills and pay orders during the months of August and September 1857, copy of a memo. made by the prisoner dated 18th September, 1857.

* Document No. 35.

original pay orders have been so altered, and in others they and the duplicates of the pay orders have been so, the cash account *not* having been altered to correspond with them. It only seems necessary to mention one or two cases in illustration of the above.

In Mr. Starbrook's* account for work done the bill amounted in reality to Rupees 416-5 only, but one component item in it has been altered from Rupees 125-7 to 425-7, making a difference of Rupees 300, the total of the bill having in a corresponding manner been increased to Rupees 716-5. Mr. Starbrook has deposed that he only received Rupees 416-5, on account of the bill in question, and that that was the sum entered in the original and duplicate bills when they left his hands, as well as in the receipted pay order, but an examination of those documents shews that they have been altered to the extent mentioned above, and that the specification of the work for which the altered sum was paid has been also altered, and that the duplicate of the pay order as well as the entry in the cash book has been altered in a corresponding manner.

In Mr. Rickie's account bill No. 1, the *original* bill has not been altered but the specification of certain quantities of work done, and the sums to be paid on account of the same, as well as the total amount of the bill have been altered. Mr. Anley's pay orders on account of the above items, which in this instance are drawn in the name of the parties entitled to receive the amount and not in the name of the Inspector, have also been altered, in the case of Takoordoyul from 7 Rupees 8 Annas to Rupees 70-8, in the case of Sonatun Sheik from Rupees 7-10 to Rupees 70-10. The duplicate pay orders, and cash book have also been altered. Both these individuals have deposed that they received the lesser sums only, viz. Rupees 7-8 and 7-10 respectively.

In like manner in regard to several of the other accounts similar alterations and erasures have been effected, the total extent to which erasures and alterations have been made being

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Rupees 1089, as specified in memorandum No. 52, which is filed with the *nuthee*, there being, as found on a careful examination of the accounts by the Court a further balance of Rupees 1,468-11-1 not accounted for in any way, that is to say the total cash balance is deficient to the extent of Rupees 2,557-11-1 (not 2,507-0-7 only as stated in the charge) of which sum Rupees 1,089 is accounted for by the alterations made in the bills, cash books, &c. and the balance Rupees 1,468-11-1 is not accounted for in any way whatsoever. It has been deposed to in evidence that the alterations in the bills, pay orders, duplicates, and cash books, are in the hand-writing of the prisoner.

The defence set up by the prisoner is four fold. 1st, that the examination of the accounts was not made in his presence, and had it been so that he was prepared to reconcile all apparent discrepancies. 2ndly, that Mr. Anley borrowed from him about Rupees 2,000 of the money, granting him receipts for the same, and that he never repaid the amount but re-possessed himself of the receipts when he took possession of the cash box and its contents. 3rdly, that the erasures and the alterations in the accounts have been made by the witness No. 1, for the prosecution (Ishur Ghose) who is anxious to supplant him in his situation. 4thly, that Mr. Rickie and several of the other witnesses are inimical to him.

The witnesses for the defence have deposed to nothing favorable on behalf of the prisoner; witness No. 17 has deposed that he, prisoner, was sitting close by when the money was counted, and that he then raised no objection. Witnesses Nos. 18, 19 and 20, have deposed that prisoner was *not* present when the accounts were gone into on the 19*th* or 21*st* September; and the former witness (No. 18,) has deposed that he himself wrote up the cash book for May, but that the prisoner did so in June, July and August. Witness No. 22 deposes to the prisoner being a good character, and witness No. 26, knows nothing bad of him, witness No. 29, knows prisoner to be a good character, but knows nothing about his income or outlay, and witness No. 30, deposes to the same effect as witness No. 29.

The Jury* composed of the three gentlemen noted in the margin, and who are acquainted with the English language, give in two separate verdicts and convict the prisoner of theft under the 2nd count of the indictment to the extent of Rupees 2,507-0-7. In this I fully concur. The prisoner, when first asked by Mr. Anley about the erasures and alterations, denied all knowledge of them, and yet it is shewn by the evidence of the witnesses including that of Khetternath his own witness No. 18, that it was his duty to keep the cash book, and that he actual-

* The Law Officer.—Baboo Doorgapershad Ghose, Additional Principal Sudder Ameen, Baboo Bunmalee Moorkerjee, vakeel.

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ly did write it during the months of June, July and August, in the accounts of which months the alterations chiefly occurred. Prisoner does not deny that he had charge of the cash box, or that the amount found therein when Mr. Anley received charge of it from him, was different from the sum stated in his memorandum. The only circumstance to which the witnesses of the defence have deposed is that the prisoner was not present when the accounts were gone into between the 19th and 21st September, but no evidence whatsoever has been brought forward in support of the other points alluded to in the defence, and I have no hesitation in saying that I believe them to be utterly without foundation. I convict the prisoner of theft, and sentence him to (5) five years' imprisonment with labor suited to his habits, and to pay a fine of Rupees 2,507-0-7 the amount charged in the indictment as having been stolen.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The particulars of this case are fully detailed by the Sessions Judge.

Mr. Allan in defence of the prisoner has urged several pleas, which were many of them preferred in the lower court, viz. that the examination of the accounts was not made in the presence of the prisoner, that Mr. Anley had borrowed Rupees 2,000 from the prisoner, and granted him receipts for the same, but had re-possessed himself of them, that the alterations in the accounts were made by the witness No. 1, who wished to supplant the prisoner, that Mr. Rickie and the other witness were inimical to the prisoner, that there is no evidence to show that there was any specific balance in the hands of the prisoner, nor when, or from whom, the money was abstracted, or what specific sum and that proof of general deficiency, without proof of a specific sum embezzled is not sufficient for conviction either on a charge of embezzlement or larceny. In support of his arguments upon the last plea Mr. Allan cites Russell on Crime, pages 183 and 184, volume II. 3rd edition.

I have attentively considered the evidence and examined the accounts in this case, and although there does not appear to have been so careful a system of accounts and checks in the department immediately under the prisoner's controul, nor so strict a supervision over his daily entries of receipts and expenditure of money, as so important an office required, and although this might have afforded temptation and opportunity for the commission of the crime, with which he is charged, it is no ground whatever for justification or palliation. It is clear from the evidence that he had charge of the cash box, and that it was his duty to keep the cash book, that he wrote entries in it in the months of June, July and August, and though it is not distinctly proved that he made the alterations with his own hand, and it is possible they may have been made by others, as

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many in the office had, it would seem, access to it, still the presumption is, and from the whole evidence it is by no means a weak one, that they were effected either by him or through his agency, in order to cover such appropriations as he might make at any time of money in the cash box. There is no doubt from the accounts put in, the memorandum of the cash balance taken when the cash was counted, and the evidence of some of the witnesses, that the amount he is charged with abstracting was abstracted by him. I see therefore no reason to interfere with the sentence passed upon him by the Sessions Judge, and reject the appeal.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

24-Perghs.

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Case of RAMDOYUL DUTT and others.

GOVERNMENT AND ANOTHER

versus

DAREEK GHOSE (No. 1,*) TOILUKHO DOSS (No. 2,*) BHOOSHA ALIAS DENONATH CHUNG (No. 3,) RAMDOYUL DUTT (No. 4,) KALACHAND MOOKERJEEA (No. 5,) AND NARAIN CHUNDER MOOKERJEEA (No. 6.†)

Case referred in consequence of a difference of opinion between the Sessions Judge and the Law Officer regarding two prisoners. The Court acquit them concurring with the Sessions Judge. The appeal of a third prisoner rejected. Remarks on the conduct in this case of one of the translators of the Court.

CRIME CHARGED.—Wilful murder of Kadeem Sheikh, &c.

Committing Officer.—Hon'ble A. Eden, Officiating Joint-Magistrate of Baraset.

Tried before Mr. J. E. S. Lillie, Officiating Additional Sessions Judge of 24-Pergunnahs, on the 16th December, 1857.

Remarks by the Officiating Additional Sessions Judge.—It appears that there is feud between certain Mookerjees and Chatterjees; that a Chatterjee is the talookdar of the villages of Kadpore and Tengra, that the Mookerjees claim subordinate tenures in those villages, which the Chatterjees resist, that some time before the occurrence, the Chatterjees distrained the property of certain ryots of Kadpore, and that one Mohun Ghose is a ryot of some Berniothur land in Tengra, the rent of which is claimed by both parties.

The facts of the present case, according to the statements of

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* Sentenced by the lower court.

† Released by ditto.

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witnesses Nos. 1 to 5,* are these. The first named witness, the Chatterjee's gomasta, accompanied by the deceased and witness No. 4, went to Tengra to collect rent. After they had proceeded a short distance on their return from the village, they met the prisoners, by order of Nos. 4, 5 and 6; No. 2, assaulted witness No. 1, with a *lathee;* and the deceased coming forward to remonstrate was struck on the head with a *lathee* by prisoner No. 1, from the effects of which he died in the course of the day.

* Wit. No. 1, Panchoo Dhara.
" " 2, Mohun Ghose.
" " 3, Bykunt Dhallee.
" " 4, Kulleemuddy Sheikh.
" " 5, Khodabuksh Peada.

Witness No. 6 gives a different version of the affair. According to his statement prisoners Nos. 1 to 3 were carrying off Mohun Ghose witness No. 2 from Tengra, Mohun Ghose resisted, witnesses Nos. 1 and 4, the deceased, and another came up, they attempted to rescue Mohun Ghose, the other party opposed them; prisoner No. 2 assaulted witness No. 1, and prisoner No. 1 assaulted the deceased.

Prisoners Nos. 4 and 5, are named in the written informations lodged before the police; but the burkundaz† of the pharee deposes that, when the chowkeedar came to give him notice, he named only prisoners Nos. 1, 2 and 3; and that, when he (deponent) proceeded to the spot and was drawing up a report to forward to the thannah, witness No. 1 prompted the chowkeedar to say that prisoners Nos. 4 and 5 had given orders for the assault.

† Wit. No. 13, Akin Mahomed.

Witness No. 11 deposes that he recognized prisoners Nos. 1, 2 and 3, as they were running away after the occurrence; and that he saw two or three others, whom he did not recognize, running at some distance from him.

Witness No. 19 deposes that witness No. 1 came into an indigo factory near the scene of the occurrence, and that he heard him say that deceased had been killed by three servants of the Mookerjees.

The Sub-Assistant Surgeon‡ proves that injuries on the head, probably inflicted by a *lathee*, were the cause of the death of the deceased.

‡ Wit. No. 10, Koylashchunder Chatterjeea.

The names of other witnesses for the prosecution are entered in the calendar, but as their evidence before the Joint-Magistrate is immaterial, I have not deemed it necessary to examine them.

Prisoner No. 1 states in his defence that he went with prisoner No. 2, to seize Mohun Ghose, but the other party opposed, the villagers came up armed with sticks, and that he ran away. Prisoner No. 2 states that he has been falsely accused, because he preferred a criminal charge against Bushtoo Chatterjee.

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Prisoner No. 3 simply denies his guilt. And prisoners Nos. 4 and 5 plead *alibis*. Witnesses Nos. 23 to 25 support the statement of prisoner No. 1, witnesses Nos. 27 to 30 support the plea of prisoner No. 4. And witnesses Nos. 33 to 38 support the plea of prisoner No. 5

The Law Officer convicts prisoners Nos. 1 to 5, of the crime of culpable homicide, he believes the entire statement of the majority of the eye-witnesses, and he declares prisoner No. 1, liable to *diyat*, and the remaining prisoners to *tazeer*.

I concur in the conviction of prisoners Nos. 1 to 3. It has been proved that prisoner No. 1 struck the fatal blows; that prisoner No. 2 was present and was actively engaged; and that prisoner No. 3 was also present armed with a *lathee*. I convict prisoner No. 1 of the crime of culpable homicide and sentence him to be imprisoned for seven (7) years with labor in irons. I convict the other prisoners of aiding and abetting in the above crime, and sentence No. 2, to be imprisoned for two (2) years, and to pay a fine of 50 rupees, or to labor during the term of his imprisonment, and No. 3, to be imprisoned for one (1) year, and to pay a fine of 25 Rupees, or to labor during the term of his imprisonment. The issue of the warrants will be suspended until this reference is decided.

I dissent from the conviction of prisoners Nos. 4 and 5. It seems clear that the version of the affair given by witness No. 6 is true. The majority of the eye-witnesses would make out that the prisoners, incensed with the gomashta (witness No. 1,) on account of the Kadpore distraint, laid in wait for him as he returned from Tengra, which is some distance from Kadpore, and attacked him without any other provocation: but such an account is manifestly incredible. The gomashta was in a very subordinate position, and there is no reason to believe that he had made himself personally particularly obnoxious to the Mookerjees. On the other hand; it is exceedingly probable that the Mookerjees should send the first three prisoners to bring Mohun Ghose to them; and that the gomashta of the opposite party, hearing that they were forcibly carrying off Mohun Ghose whom he regarded as the ryot of his master, should oppose them and endeavour to set him free. That prisoners Nos. 4 and 5 should have accompanied the other prisoners, is unlikely. There was no occasion for them to go: they could not have anticipated any opposition; for if they had anticipated it, they would not have gone to use violence in a hostile village with so small a party. This conclusion is strongly supported by the fact that the chowkeedar did not mention the names of prisoners Nos. 4 and 5, when he first reported the occurrence to the burkundaz, and by the fact that the gomashta did not mention their names when he first related the occurrence in the indigo factory.

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Case of RAMDOYUL DUTT and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) This case is referred in consequence of a difference of opinion between the Sessions Judge and the Law Officer regarding the prisoners Nos. 4 and 5. They have been defended in this Court by Baboo Dwarkanath Mitter. The particulars of the case, the feud between the Chatterjees and the Mookerjees, the assault originating in the attempt to carry off Mohun Ghose witness No. 2, and the circumstances attending it are given by the Magistrate and the Sessions Judge. Although the principal eye-witnesses, including Mohun Ghose himself, deny the fact of this arrest, and attempt to make it appear that all the prisoners were lying in wait for the witness No. 1, and attacked him without provocation, the whole evidence, carefully considered, bears out the view taken by the Sessions Judge, that this was the real object of the prisoners Nos. 1, 2 and 3, and that the offence, with which they were charged, was committed by them when opposed and thwarted in the prosecution of it. It is the most probable, and only reasonable solution of the case. It strengthens therefore the weight of the testimony of the witness No 6, who from his respectability, and being an independent and disinterested party, is not likely to have colored or concealed any of the facts that came under his own observation. Relying therefore on his statement, and taking it in connection with all the circumstances and probabilities, as they appear and can be gathered from the evidence, there is no satisfactory proof I think of the guilt of the prisoners Nos. 4 and 5, and I concur with the Sessions Judge in acquitting them.

On the case coming on for hearing Baboo Dwarkanath Mitter put in a *vakalatnamah* in behalf of the prisoner No. 3, and urged objections to the sentence passed upon him by the Sessions Judge. He argued that, if the evidence against the prisoner is to be believed, it does not show participation in the crime, and that there is no proof, unless his mere presence can be so construed of his aiding and abetting in it.

The evidence against the prisoner, on the charge of which he has been found guilty, is in my opinion very conclusive, and for so serious an offence he has been dealt with very leniently. I see no reason whatever to disturb this sentence and reject the appeal. I cannot but remark with reference to the proceedings in this case, that Narainchunder Mookerjee, one of the Tranlators of this Court, who was committed on a charge of privity to the murder of the deceased, but on, it would seem, just grounds, acquitted by the Sessions Judge, abused the confidence placed in him by the Magistrate with regard to the entertainment of the prisoners Nos 1 and 2 as *lattials*. His excuse that they were employed by his nephew and not by him is, I concur with the Magistrate in thinking, under the circumstances, not to be believed, he and his nephew living in the same house.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

MUSSUMUT DEOLA AND GOVERNMENT *versus* SUMBUL SINGH.

Bhaugulpore.

1858.

February 26.

Case of SUMBUL SINGH.

The prisoner acquitted on account of the weakness of the evidence for the prosecution and the improbabilities of the actual commission of the offence, as charged.

CRIME CHARGED.—Rape committed on the person of Mussumut Deola, prosecutrix.

Committing Officer.—Mr. W. T. Tucker, Magistrate of Bhaugulpore.

Tried before Mr. T. Sandys, Sessions Judge of Bhaugulpore on the 1st February, 1858.

Deola, prosecutrix, Bynath her father, witness No. 8.

Remarks by the Sessions Judge.—The prosecutrix, a well-formed married girl of the Sonthal tribe, about seventeen years of age, was on a visit to her father, a fellow-villager of the prisoner's, in a wild part of the country. She was one day attending her father's cattle in the jungle in company with Kundee, a little girl of eight to nine years of age, the daughter of Mindas. The prisoner came suddenly on them and pretending he had orders from the zemindar to drive off Mindas's cattle for money due, commenced doing so, and on prosecutrix's interfering, he threw her down, and forcibly raped her. This is confirmed by a young lad, Girdharee, witness No. 1, who happened to be close at hand, as would seem to have been the case by the prisoner's statements both before police and Magistrate, by Kundee (witness No. 2,) whose deposition was recorded under Sections 14 and 15, Act II. of 1855, and also by another lad Jhubboo before the Magistrate, but absent before this Court. Both these lads were younger and no match for the prisoner, even if they had felt inclined to oppose him.

Girdharee, wit. No. 1.
Musst. Kundee, wit. No. 2.

The prisoner, a sharp robust looking youth, about twenty, repeats the circumstances deposed to by the prosecution with the sole exception that he only struck the prosecutrix for interfering. But this is a lame defence in the face of his having absconded immediately after the offence, hid himself apparently, according to the statements originally madein connivance with the police, and escaped arrest from May until 29th November last. The only explanation he offers for this is that "he was afraid of the *Sonthals*," but this could only have been the case for the higher and not the minor

Huzooree, wit. No. 4,
Jeetoo chowkeedar, wit. No. 5.

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offence. He cited witnesses before the Magistrate, and fresh ones before this Court, but none knew anything in his favor.

Jhubbun Roy, Dunkoorea Bhaugulpore Ruggoo Singh Wulleepore Monghyr, Doorbut Sing, Dukrah Monghyr.
Wahed Ally Khan, Hajeepore, Tirhoot.

The Jury unanimously convict the prisoner on the count charged.

Except for the defence, and the character of the injured people, this may be regarded as a very weak case. There was no complaint for several days after the outrage, upwards of eight or nine. Both father and husband up to the Sessions Court had always kept themselves out of the way. But finding the father in company with his daughter I took his deposition, and the only explanation he would give for there not having been earlier complaint was, that "he was looking for the prisoner," the probability is to take the law into his own hands. Considerable allowance must be made for these rude people, whose truthfulness is at least to be depended on, and under all the circumstances, finding no reason to doubt the prosecution, I convict the prisoner of the crime charged, and would recommend his being sentenced to five years' imprisonment in labor and irons in the district jail.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) This is one of the weakest cases, on which a conviction of rape could possibly be supported. The woman, who makes the charge, is a young married woman. She was staying at her father's house, when the offence was committed, her own, that is, her husband's, house being three *coss* off. Her husband appears to have been perfectly indifferent about her dishonor. He made no charge, had no wish to prosecute, and took no steps to bring the offender to account. The father appears to have been equally indifferent. The young woman herself, without any reasonable cause, makes no complaint of the outrage committed upon her person, and allows more than a week to pass before she gives information at the thannah. The mother was made aware of it as well as the father immediately after the commission, and she too remains passive.

All this of itself would raise a suspicion of the truth of the story, or at any rate, if true, of the fact of the woman being an unwilling victim of the prisoner's lust. She herself before the Sessions Judge makes a most damaging statement. She states she remained perfectly quiet while the act was committed. It is true that the witness Girdharee No. 1 states that she cried out, but if he is to be believed, there is a contradiction on the *most material* point in the case, for, of course, if there was no resistance of any kind, and no cry raised, the Court must infer that the woman was a consenting party, and there could have

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Case of SUMBUL SINGH.

been no rape. The offence, to constitute rape, must be committed by force against the woman's will.

Then there is the prisoner's explanation, which is not an improbable one, that he was employed in the service of Narain Singh as a peadah, and was sent by him to seize the cattle belonging to the father of the prosecutrix, who owed him money; and that as he was carrying off a buffaloe the prosecutrix interfered, when he struck her twice, and she began to cry, and he left the buffaloe and came and told his master, who ordered him to run away, or the Sonthals would kill him.

His keeping out of the way for so long a time is certainly a very suspicious circumstance, if this defence is true, and in a case admitting of so much doubt Narain Singh should have been examined for the purpose of testing its accuracy.

The evidence for the prosecution is so weak, and the improbabilities of the actual commission of the offence, as charged, are so great, that I acquit the prisoner, and direct his immediate release.

REGULAR CASES.

MARCH,

1858.

REGULAR CASES.
MARCH 1858.

PRESENT:
D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT
versus
BUDDUN MALLO.

Jessore.

1858.

March 6.
Case of
BUDDUN
MALLO.

The prisoner acquitted, the charge of perjury, as laid in the calender, not being established against him.

CRIME CHARGED.—Perjury in having, on the 17th July 1843, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the Magistrate of Jessore that they (prisoners) went out fishing on the Modhoomuthy River on the night in which the dacoity on the boat was committed, and in having on the 13th October, 1857, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the officiating additional Sessions Judge of the 24 Purgunnahs that they did not go out fishing on the Modhoomutty River on the night in which the dacoity on the boat was committed, such statement being contradictory of each other on a point material to the issue of the case.

Committing Officer.—Baboo Gooroochurn Doss, Deputy Magistrate for the suppression of dacoity at Jessore.

Tried before Mr. J. E. S. Lillie, Additional Sessions Judge, on the 6th February, 1858.

Remarks by the Additional Sessions Judge.—One Ramniddy Shaha, having confessed before the Deputy Magistrate stationed at Jessore, under the Dacoity Commissioner to having belonged to a gang of dacoits, was committed to the sessions, and to corroborate his confession regarding a dacoity in the boat of Girdharee Mawjee in the Modhoomutty River, the prisoner in the present trial and another were named as witnesses.

It appears that the prisoner had originally deposed before the Magistrate of Jessore, that while he was returning in a boat from fishing he had seen and caused to be apprehended five or six persons who afterwards confessed to having been engaged in the above-mentioned dacoity. The prisoner stated that this occurred on the night of a particular festival (*hazarabatee*), and it appears from the Darogah's report that the dacoity was committed on that night.

The prisoner was examined by the Deputy Magistrate on the 12th September last, when he repeated the substance of his

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Case of BUDDUN MALLO.

original deposition. At the Sessions he affirmed that he did not go out to fish on the night of the dacoity.

The prisoner pleads *guilty.*—Witnesses Nos. 1 to 3, duly prove the depositions on which the charge is founded.

The jury are of opinion that the charge is not proved, because the contradictory statements were not made on the same day, and because the prisoner's denial of his former statement after the lapse of such an interval cannot be deemed full proof of guilt.

I have overruled this opinion under the provisions of Clause 2, Section 4, Regulation VI. of 1832. Had the prisoner not repeated his original statement when re-examined by the Deputy Magistrate, the plea of defect of memory would undoubtedly have been valid, and I should not have ordered the commitment.

Although clearly of opinion that the prisoner is guilty of perjury, I consider that he is a fit subject for mitigation of punishment. There was no apparent motive for the denial of his former statement, which denial he admits to be false, as the prisoner in whose case he was examined pleaded guilty at the Sessions.

Under the provisions of the law* quoted in the first para. of this letter, I sentence the prisoner to be imprisoned for three years with labor in irons, but considering that he has been in confinement since the 15th of October last, I would recommend that the term of his imprisonment be commuted to three months.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) It is distinctly stated in the calendar that the prisoner is guilty of perjury, in having on the 17th July 1843 intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the Magistrate of Jessore, that "they (prisoners) went out fishing on the Modhoomutty River on the night in which the dacoity on the boat was committed," and in having on the 13th October 1857 again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the Officiating Additional Sessions Judge of the 24-Pergunnahs that "they did not go out fishing on the Modhoomutty River on the night in which the dacoity on the boat was committed." Such statements being contradictory of each other on a point material to the issue of the case.

Now putting aside the question, whether the denial by the prisoner of the previous statement, that he and others had gone out fishing on the Modhoomutty River on the night of the dacoity, was material or not to the issue of the case, and also the fact, that it was very possible, that the prisoner, giving

* Clause 3, Section 9, Regulation XVII. of 1817.

a deposition on the 13th October 1857, might on such a point have forgotten what he had exactly stated on the 17th July 1843, more than fourteen years having elapsed between these dates, I do not find that the statement he is alleged to have made in his first deposition in 1843 was made as charged in the calendar. The Bengalee date of that deposition is 2nd *Srabun*, 1250 B. S., and all that the prisoner deposes to on this subject is, that he went out fishing on the river above-named in the month of *Cheyt*, and in the month of *Jeyt* heard that certain persons whom he names, had committed a dacoity in a Muhajun's boat on that River. The charge therefore, as laid in the Calendar, is not established. The Deputy Magistrate should be directed to be more careful in making out such charges. The confession of the prisoner, which the Sessions Judge notices, does not extend to an acknowledgment of the guilt of perjury, but of having made the two statements imputed to him in the charge, the first of which when read out to him he may have supposed was correctly recorded. Under these circumstances, I acquit the prisoner and direct his immediate release.

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March 6.

Case of BUDDUN MALLO.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT

versus

CHUNDEE SHIKARRY, (No. 1,) HARRAN SHIKARRY (No. 2,) GUGUN SHIKARRY, (No. 3,) AND KANYE SHIKARRY, (No. 4.)

1858.

March 8.

Case of CHUNDEE SHIKARRY and others.

Sentence upon the prisoners convicted under Act XI. of 1848 confirmed.

CRIME CHARGED.—Going out in a gang for the purpose of committing robbery or theft. Act XI. 1848.

CRIME ESTABLISHED.—Belonging to a gang of professional thieves and robbers, and committing robbery or theft within the meaning of Act XI. 1848.

Committing Officer.—The Hon'ble A. Eden, Officiating Joint-Magistrate of Baraset.

Tried before Mr. E. Lautour, Sessions Judge of 24-Pergunnahs, on the 18th November, 1857.

Remarks by the Sessions Judge.—The Deputy Magistrate of Kulloroa notified the departure of Buddiahs from their houses. In consequence Chunder Mohun Rae, witness No. 4, the Darogah of Lubsha thannah was on the out-look in order to apprehend them.

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Intending to examine the Pransaha Khaul, he observed two men talking by signs, and suspected from this, that they were Buddiahs, watched them, and saw them go on board another boat on which there were two other men. He then with Torab Burkundaz boarded the boat, and they said, they were men of the Kopali caste, going to buy grain, but fully suspecting them and asking them closely, they said they were Buddiahs, and gave their names as per Calendar. The boat was searched, and the *seend katties* and knives and different articles of property were discovered. Prisoners Nos. 1 and 2, confessed to having committed a burglary two nights previously in a village named Koomree. That they were accompanied by another Kanaye Sirdar and that the five had gone to commit thefts and burglaries and were then going down on the ebb to the jungles for the same purpose. Report, 22nd August, 1857.

Doomye Sheik, witness No. 1, deposes to hearing a noise from the boat in question at 7 A. M., saw that the four prisoners were arrested at the Darogah's request, examined the boat, found under the deck the *seend katties*, the knives and the ornaments in Court. The prisoners said they were Buddiahs.

Bugwan Doss, witness No. 2, deposes to the same effect.

Panchoo Koondo, witness No. 3, to the same effect: not examined.

Chundermohun Roy Darogah, witness No. 4, examined, states, as per his report of the 22d August, that he recorded the confessions of the prisoners himself.

The witnesses Nos. 5, 6 and 7, to the *Sooruthal* not examined, being unnecessary.

No. 8, Kallychurn Doss, speaks to confessions of prisoners, Nos. 1 and 2. That the same were voluntarily made.

Prisoner No. 1, Chunder Shikarry denies all knowledge of the property and burglarious implements found on his boat, states he was going to cut wood, examines Tarachand Poddar, and Goburdhun.

Prisoner No. 2, Haran, was going to fetch fire-wood, denies all knowledge of the property and implements and also confession, names the same witnesses.

Prisoner No. 3, Gugun Shikarry, denies all knowledge of the property, &c. went to bring rice at Pransaha. Darogah wanted to engage our boat, so we refused, and he made us prisoners. Was an oar-man on the boat of prisoner, No. 1, as was Harran, names the same witnesses.

Prisoner No. 4, Kanye Shikarry idem, was going to cut wood. The same story as to the Darogah wishing to engage us. He must have introduced the property into the boat, knows nothing of that, examines the same witnesses. They know that I am an honest man.

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*Tarachand.** They are Buddiahs and live as boat-men: they are of good repute.

Podar Mundul.† They are Buddiahs, have land ploughs and boats, would rather not be surety for them.

Goburdhun Mundul.‡ They have ploughs, land and boats, would not be their sureties.

* Witness No. 14,
† " " 15,
‡ " " 16.

These people belong to a set of robbers. They are initiated from childhood and make this their profession. A large gang having left their houses, the Police were looking after them, when these four were arrested.

Implements for the commission of burglary were found in their boats: also disguises, so that they could prowl about the villages as mendicants and so forth, and further, property which no one can doubt to have been stolen was found in their boat. The two last prisoners trump up a story against the Darogah, and this is made for the first time.

I convict the prisoners of an offence within the meaning of Act XI. of 1848, and sentence them to be imprisoned with hard labor for seven years.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The prisoners have been tried and convicted by the Sessions Judge under the provisions of Act XI. of 1848. The evidence supports the conviction, and I see no reason to interfere with the sentence which has been passed upon them. The appeal is therefore rejected.

Baraset.

1858.

March 9.

Case of LUNGEE DHYENEE.

PRESENT:

D. I. MONEY, ESQ., *Judge.*

GOVERNMENT

versus

LUNGEE DHYENEE.

The prisoner acquitted of wilful perjury, the Court holding that the contradiction between the two statements made by her amounted to prevarication, inasmuch as she admitted the correctness of her first statement directly it was read to her.

CRIME CHARGED.—Perjury in having on the 3rd November, 1857, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the Joint-Magistrate of Baraset, that the deceased Bowanee had told her that Agnasee Dhyenee (the prisoner) had given her drugs to procure abortion; and in having on the 12th December, 1857, again intentionally, and deliberately deposed under a solemn declaration taken instead of an oath before the Officiating Additional Sessions Judge of the 24-Pergunnahs, that Bowanee did not make the above statement, such statements being contradictory to each other on a point material to the issue of the case.

Committing Officer.—Hon'ble A. Eden, Officiating Joint-Magistrate of Baraset.

1858.

March 9.

Case of LUNGEE DHYENEE.

Tried before Mr. J. E. S. Lillie, Additional Sessions Judge of 24-Pergunnahs on the 8th February, 1858.

Remarks by the Additional Sessions Judge.—Agnasee Chamarnee was indicted for the culpable homicide of Bowanee Chamarnee by administering drugs for the purpose of procuring abortion. The prisoner in the present trial was examined by the Committing Officer, and deposed that she had visited the deceased who was very ill, and that in reply to her interrogations the deceased had informed her that her illness was caused by Agnasee having given her drugs to procure abortion.

At the Sessions the prisoner omitted to mention that circumstance, and though repeatedly questioned with respect to what cause the deceased had assigned for the origin of her illness, she affirmed that the deceased had assigned no cause whatever.

The prisoner pleads *guilty*. The depositions on which the charge is founded have been duly proved.* The prisoner has nothing to urge in her defence.

Wit. No. 2, Mohimachunder Bose Mohurir.
" " 4, Hury Prosono Chaterjea, mohurir.

The *futwa* of the Law Officer acquits the prisoner. He sees no contradiction in the two statements. He considers that the prisoner's denial of her former statement arose from misapprehension, and that she re-affirmed that statement when it was brought to her notice. It should be mentioned that the Law Officer was not present at the trial of Agnasee.

The reasoning of the Law Officer is not borne out by facts. A reference to the prisoner's deposition at the Sessions will show that she affirmed in the most distinct and unqualified manner that the deceased had not informed her of the cause of the origin of her illness, and that it was only after her deposition had been read to her, that she admitted it was correct.

Believing the prisoner to be guilty of the crime of perjury, I would convict her, and would recommend that she be imprisoned for three (3) years with labour suitable to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) There is no doubt a contradiction between the statement made by the prisoner on the 3rd November, 1857, and that of the 12th December, 1857. But on examining both the statements carefully I must say there is a doubt whether the prisoner fully apprehended the purport of the question put to her on the 12th December, 1857, when she was interrogated, as to whether she had asked the deceased Bowanee if any medicine had been given to her to cause her illness, and she made replies contradictory to her former statement. If she did understand it, she was guilty, I think, at the most, of prevarication, and not of wilful perjury, for the moment her previous statement was read to her, she acknowledged its correctness. Under these circumstances, giving her the benefit of the doubt, I acquit her and direct her immediate release.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT AND NITTO CHUNDALEENEE
versus
GIRISH DOSS.

Nuddea.

1858.

March 19.

Case of GIRISH DOSS.

The Sessions Judge sentenced the prisoner to seven years' imprisonment with labor in irons, and two years more in lieu of stripes. The substitution of two years further imprisonment in lieu of stripes on a conviction of culpable homicide held to be illegal. (C. O. 21st May, 1824, No. 293.) His sentence therefore upon the prisoner of two years' imprisonment in lieu of stripes reversed and the sentence of seven years' imprisonment with labor in irons confirmed.

CRIME CHARGED.—Wilful murder of Dinoo Chundal, the husband of the prosecutrix Nitto Chundaleenee.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Baboo Isshur Chunder Ghosal, Deputy Magistrate of Santipore.

Tried before Mr. R. M. Skinner, Sessions Judge of Nuddea, on the 5th May, 1857.

Remarks by the Sessions Judge.—The evidence for the prosection* shews that Jadoo Chung, Roohit Chung and Dinoo Chundal (deceased) had a lease of a fishery. The two former went to repair the embankment on the night of the 3rd Cheit. Dinoo was at a distance cooking. About midnight persons came and stole fish. Some of them ran off, witnesses went and apprehended those who remained. Discussion ensued, Dinoo took one bamboo, Jadoo another, they were going to the village to complain, when they had gone about one *russee*, the prisoner Girish Doss seized the bamboo out of the hand of witness No. 1, and struck him, he fell, the prisoner then beat Dinoo on the right wrist and on the head. Dinoo fell, prisoner ran off. The blow on the head fractured the skull, notice was given to the gomastah who sent the Chowkeedar witness No. 14 and ryots† in whose presence Dinoo said that Girish Doss (prisoner) had wounded him with a bamboo, Dinoo died early in the morning *(four dunds)* of 4th Cheit. That day the chowkeedar gave information at the thannah, and the gomastah wrote to the Darogah, who went to the spot (on 4th Cheit) the same day and took the widow's deposition on the following day 5th Cheit. The witnesses also were examined by the Darogah, and the prisoner confessed‡ and said that Dinoo and others were taking him to the village and he seized a bamboo and hit witness No. 1. He confessed before the Deputy Magistrate of

* Eye-Wit. No. 1, Jadoo Chung.
" " 2, Roohit Chung.

† Wit. No. 11, Bodon Mundle.
" " 12, Girish Chung.
" " 13, Bhogoban Chung.

‡ Wit. No. 5, Dinnonath Chundro.
" " 6, Goluck Doss.
7, Sadoo Mundle.
8, Dinnonath Chuckerbutty.
" " 9, Tarachurn Banerjea

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Santipore that he struck witness No. 1, and asserted that Beeroo struck deceased on the head. The evidence of the Assistant Surgeon shews that death was caused by the above mentioned blow on the head, which was inflicted by the prisoner. Here prisoner pretends that he knows nothing about the case, but that Sadoo Mundle, his enemy, must have named him.

The jury convict the prisoner of *Kutl Shubeh Ahmed* or culpable homicide. The prisoner evidently struck the blow in order to escape from being taken to the village.

I concur in this verdict and sentence him to ten years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) This prisoner was formerly sentenced by the Sessions Judge, on being convicted of culpable homicide, to ten years' imprisonment with labor in irons.

The prisoner appealed and the sentence of the Sessions Judge was annulled by this Court (Present: Messrs. Sconce and Torrens) as being beyond the competency of the Judge, and contrary to the provisions of Section 7, Regulation XVII. of 1817, and Section 7, Regulation XII. of 1825.

The proceedings were returned and the Sessions Judge was directed to proceed according to law.

On the remand of the record, the Sessions Judge sentenced the prisoner to seven years' imprisonment with labor in irons and two years more in lieu of stripes.

The prisoner has again appealed. I find no fault with the conviction, or the evidence upon which that conviction is based. The charge is clearly established against the prisoner. But it is to be regretted that the Sessions Judge has a second time passed a sentence which he was not competent to pass, and again contravened the provisions of the law. The substitution of two years further imprisonment in lieu of stripes is, on a conviction of culpable homicide, illegal. See Circular Order, 21st May, 1824, No. 293.

I reverse, therefore, that part of the Sessions Judge's order which sentences the prisoner to imprisonment for two years in lieu of stripes, and confirm only the sentence of seven years' imprisonment with labor in irons.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT AND RAMANATH THACOOR

versus

BUGOBUTTY CHURN HALDAR.

24-Pergunnahs.

1858.

March 31.

Case of BHOGOBUTTY CHURN HALDAR.

The prisoner convicted of forgery in altering a mooktearnameh, and issuing the altered instrument, and fraudulently appropriating money by means of it, was sentenced by the Sessions Judge to seven years' imprisonment with hard labor in irons.

An appeal was preferred by the prisoner on the ground that the evidence did not establish the charge of which he was convicted, and that if it did, the punishment was too severe.

The Court held the charge to be

CRIME CHARGED.—1st count, forgery in altering a *moktearnamah* granted to him by the prosecutor with the intent of defrauding him the said prosecutor; 2nd count, issuing the abovementioned "*moktearnamah,*" knowing a portion of it to have been fabricated.

Charge 2nd, fraudulently obtaining by means of the abovementioned altered instrument from the Treasury of the 24-Pergunnahs the sum of Co.'s Rs. 318-3-8 and appropriating the same to his own use.

Charge 3rd, embezzlement of Co.'s Rs. 318-3-8, belonging to the prosecutor Ramanath Thacoor.

Charge 4th, theft of the Co.'s Rs. 318-3-8, belonging to the prosecutor Ramanath Thacoor.

CRIME ESTABLISHED.—Forgery and issuing a *moktearnamah* knowing a portion of it to have been fabricated and fraudulently appropriating Co.'s Rs. 318-3-8.

Committing Officer.—Mr. C. F. Montresor, Officiating Magistrate of 24-Pergunnahs.

Tried before Mr. E. Lautour, Sessions Judge of 24-Pergunnahs, on the 19th September, 1857.

Remarks by the Sessions Judge.—In this case the defendant was employed by the prosecutor to look after the case in which, he was interested as executor to the estate of Oodyochand, re-14*c*. 3*c*. belonging thereto, and which was taken for public purposes, under the power he was authorized to petition the Collector and make the necessary exertions in the matter, extending to filing proof, &c. The act of forgery charged consists in the addition of the words *mulyeo thaka*, after the words *duleel dustavez* making the authority extend to taking out the money. The document therefore as interpolated runs *duleel dustavez mulo thaka adhi kagzat wapus loihek.*

NOTE.—There is no connection between cash and other papers, neither is there any connection between the cash and the word *wapus*. Without these words *mulyer thaka*, the power of *attorney is correct.*

The prosecutor deposes to employing the defendant to look after that particular case in the Collector's Court. That he heard from Nusheechunder Chuckerbutty that the defendant had taken the money (318-3-8,) and accordingly sent Ashotos

1858. March 31. Case of BHOGOBUTTY CHURN HALDAR. proved, and, not considering the punishment too severe with reference to the circumstances of the case, confirmed the sentence and dismissed the appeal.

Chatterjea to the Collectory, to ascertain if it was so, who reported that he had taken the money and under his instruction application was made to the Collector and the power of attorney obtained, from which it appeared that the power of attorney had been interpolated; on being questioned the defendant admitted having taken the money and paid it to Nuseechunder the Treasurer, who, however, had previously denied his having received the money. When he said he would apply under proper powers for the money. He then made off and the prosecutor did not see him again.

Swears that the words interpolated were no part of the original power of attorney. In answer to Mr. Norris as to whether the power of attorney may not have been brought for signature with other papers, says, that it was brought by itself. The defendant bringing it himself.

In the Magistrate's Court, the defendant stated that the power of attorney was in his own hand writing; that under the powers delegated he took out the money and deducting 35 Rs. odd on account of expenses paid over the balance 283 Rs. odd to Muheshchunder Chuckerbutty, the prosecutor's manager, to whom he gave the account at the same time, but that it not being the custom to give receipts, none was given. That defendant had no access to the power of attorney after it was filed in the Collectorates.

A warrant for the arrest was issued on the 22nd of January, 1857, he appeared after the attachment of his property in Hooghly on the 6th of July.

Witness No. 2 Gopeenath, is general attorney to the estate of Oodoychand, states that the defendant on being questioned denied having received the money, but subsequently on the fact being ascertained that he had taken the money and given his receipt for the money in the collectorate, he admitted the same and begged the deponent to exercise his influence in getting him out of the scrape, he at the same time promising to scrape the money together

Witness No 3, Moheshchunder Chuckerbutty deposes to the prosecutor sending for him and asking whether as the canal matter had been closed, the compensation money had been paid in and where Bogobuttychurn was and bid me to go to the collectorate and ascertain, so he went accompanied by Sredhur. The Mohafez would give no clue and said the record could not be traced. The accountant said the record had been sent to the record-keeper so that between him they could get no information. The deponent then went to the office of the Deputy Collector and from the English register, it appeared that the price for the land had been settled at 318 Rs. odd. The writer said he would go and see if it had been disbursed, and went to the Treasury and a Brahmin Mohurrir with a memorandum show-

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ing that it had been disbursed on the 2nd of February and accompanied the English writer and told him. Deponent reported this to the prosecutor, next day the defendant went to the prosecutor's, seeing him, deponent asked how it was as he had ascertained from the Collectorate that the money had been disbursed, to which prisoner said it was impossible, probably the money might be in deposit. No power to take out money existed in his power of attorney. At this time Gopeenath came up, the three went to the prosecutor, defendant offered to take out the money on being provided with a proper power. The deponent and Gopeenath went with the prisoner to the Collector, wished to examine deposit ledger. They said the money was in deposit and told us to fetch a necessary power of attorney so returned to prosecutor who was offended, stated to him their suspicions next day. Prosecutor sent for the head writer Ramdhone and sent also Ashotos wakeel to ascertain all the facts, wherein the present prosecution originates.

Chundychurn said he would pay the money and Bhogobuttychurn the defendant used to accompany him. He came for three days and then absconded. Is cashier to the prosecutor. The Collectory omlah did not show the power of attorney or the prisoner's receipt to the deponent. Is not able to say whether the defendant's confession preceded or followed the return of the power of attorney to the prosecutor, it was subsequent to the intervention of the head writer; was in the habit of employing the prisoner to pay in money occasionally, on one occasion thirty-two or thirty-three rupees was given to him to pay into the Collectorate, on demanding the *dakhila* it was not forthcoming; wrote a note unknown to the prosecutor, deponent being afraid, he being responsible to Neelcomul and got the money and a *dakhila*, defendant embezzled this and deponent made himself responsible. This practice in deponent's office is to give receipts for all payments which are first entered in the rough waste book and then entered in the regular *roka*.

Witness No. 6, *Ramdhone Sandyal* states that the money was paid to the prisoner after inspecting the power of attorney admits that this is in its terms *ajar*. That it is quite correct with reference to all its terms, if the words *mulyo thaka* be omitted.

Note.—From the manner in which this witness gave his evidence my opinion of the deponent was unfavorable to him. He had the appearance of a *particeps criminis*. The manner might however be natural to a wish to palliate which was only a culpable negligence.

Witness No. 1, *Kamul Bose*, to the execution of the power without authorization to take out the money.

Witness No. 4, *Golam Kadir* not in attendance.

Witness No. 5, *Ameeruddin Sircar*, to the admission of the

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prisoner that the alteration in the power of attorney was made by him.

The defendant denies the charge of forgery and fraudulent appropriation of the money and names witnesses to establish his defence.

Witness No. 8, Chundychurn Chatterjea deposes that he introduced the defendant to the prosecutor, that he discharged his duties well. That the defendant took the money out of the Collectorate and paid it over to the Treasurer Nuseechunder instead of to the Baboo and the Treasurer appropriated it. The prosecutor advised deponent to settle it amicably; went to the Treasurer who admitted having had the money and that he had appropriated it to his own purposes and begged him, deponent, to speak to the prosecutor for a week's time within which he would pay the money, but not to mention him in any way and that the Baboo said in reply, Take a month, during which interval he constantly pressed the Treasuer.

Witness No. 9, Prosonochunder Mookerjea has known the prisoner for same time, he is a moktear of good reputation until the present confusion *(goolmal)* In Magh 1262 he took the 318 Rs. from the Collectorate and placed them with deponent, next day he asked him to give him the money to pay Nusee Chuckerbutty, the Treasurer, and he paid 282 Rs. to him, deponent did not accompany the prisoner.

Witness No. 10, Biresur Mokopadhia as above.

Witness No. 14, Ramchand Paul, that he went to ask payment of ten rupees and found the prisoner drafting a power of attorney, and he asked him to read the draft, the power of attorney authorized him to take out documents, money, and other papers. This was in Ugrohon 1261 B. S. This witness was not examined in the Magistrate's Court.

It is impossible to attach any degree of credibility to this witness.

The Law Officer convicts the prisoner upon the first charge, 1st and 2nd count, also of fraudulent appropriation as per the 2nd charge, of 318 Rs. 3-8. The reasons upon which this *futwa* rests are recorded in the *futwa.*

This finding has my concurrence.

The prisoner has had every assistance of Counsel. The case for the prosecution is nowhere shaken. The evidence of the prosecutor and his witnesses is unimpeachable, and I am unable to place any reliance upon that for defendant.

In this case that the power of attorney has been interpolated and additional powers added admits of no possible doubt. With these additional words, the power of attorney is all *ajar*. Without them it is perfectly correct. The money not being forthcoming, enquiries are instituted at the Collectors. From the record office and disbursing departments, no assistance is afforded, and

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en ..ng parties are passed about between the two offices without ..ny possibility of obtaining the desired information. In the Deputy Collector's English Office the sum is traced as awarded in compensation. The writer goes to the Treasurer and with the assistance of a Brahmin Mohurrir traced its disbursement on the 2nd of February. The parties return to the prosecutor. The defendant denies the possibility of a disbursement without any powers in the power of attorney to take out the money. Which he offers to apply for with the necessary powers. They proceed to the Treasury, seek to examine the deposit register, and are again obstructed, they are told the item was in deposit, but they must bring the necessary power of attorney. They again return to the prosecutor who employs Ashotoss a vakeel of the Sudder Dewanny Adawlut, who makes the necessary enquiries and obtains possession of the power of attorney which shows the fabrication.

The defendant wishes to have examined the Register of the Collector's office in which abstracts of powers are recorded, to show that this was a power to take out money and entered accordingly. This would, however, fail to prove that the fabrication was not made. Indeed, it would show and establish that it had been made before filing it.

I am asked to send for the receipts Register of the prosecutor and *juma kuruch* accounts of the prosecutor, to see whether receipts are customarily given for monies paid into the prosecutor's Treasury.

This too, would only afford negative proof and would not establish the fact of any actual payment having been made as pleaded in the defence. There is abundant proof to establish the non-payment in the admission of the defendant, as most distinctly sworn to by the witnesses for the prosecution. Neither can it be supposed that the prosecutor a highly respectable native gentleman, would take all the trouble to come into a Criminal Court and prosecute the plaintiff if it was not true. ..ith

The witnesses for the defendant endeavour to turn the tables upon the Treasurer. Chundychurn Chatterjea says he begged him not to tell the Baboo prosecutor, that he had himself embezzled the money which he would replace in a week. This is incredible on the face of it. It is distinctly in evidence that the money was paid out on the power of attorney authorizing such payment, and is as distinctly sworn to, that no such power existed in the original power of attorney.

Then the prisoner absconds from 22nd of January to the 6th July when he attends voluntarily after the attachment of his property.

What are the presumptions in the case. That theft should follow the fabrication of the power or that honest payment in

1858. due course should follow the fabrication, as pleaded *ex qs mano*
March 31. are we to arrive at our conclusions. The forgery and the
Case of taking the money out of Court under the forged instrument are
BHOGOBUTTY CHURN well established, so also is the denial of the recipiency of that
HALDAR. money, then come the subsequent admissions, proceedings before the Magistrate, flight of the prisoner and subsequent surrender after attachment of his property.

Convicting therefore the prisoner as indicted and in concurrence with the Law Officer, I sentence him to be imprisoned in irons with hard labour for seven years; and I cannot close the case without expressing an opinion, that a strong presumption arises unfavorable to the Officers in the disbursing department of the Collector's Office, exclusive of the actual Treasury probably.

The prosecutor may be re-imbursed to the extent of this embezzlement under Act XVI. of 1850, and his costs under Section 39, Reg. VII. 1803 recoverable by distress and sale.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money) This appeal is preferred by the prisoner, and supported by his pleader, on the ground first that the evidence does not establish the crime of which the prisoner has been convicted, and secondly that, if it does, the punishment is too severe.

After carefully going through the case, there cannot, I think, be a doubt from the whole evidence of the prisoner's guilt. There is no allegation made that the prosecutor, who is acknowledged to be a most respectable man, has been in any degree actuated by malice or ill-feeling against the prisoner, and nothing has been brought forward by the prisoner, and no plea urged in his defence, to shake the evidence for the prosecution.

Regarding the severity of the punishment, this is, I think, just one of those cases in which punishment should be severe. It is necessary for the sake of example. The prisoner was employed for a special purpose. He had an important duty to perform, and for the performance of it he was entrusted with certain powers. He plays false. He abuses the confidence which was reposed in him. He fraudulently alters the instrument, in which those powers were delegated, and by means of the forgery appropriates his employer's money.

I see no reason to interfere with the sentence passed upon the prisoner, and reject the appeal.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT

versus

MUSST. OOTOMEE.

Tipperah.

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Case of MUSST. OOTOMEE.

The prisoner convicted on violent presumption of aiding and abetting in the murder of her husband, was sentenced, agreeably to the recommendation of the Sessions Judge, to imprisonment for life with labor suited to her sex.

CRIME CHARGED.—Wilful murder of her husband Akbur.

Committing Officer.—Mr. H. A. Cockerell, Officiating Magistrate.

Tried before Mr. H. C. Metcalfe, Sessions Judge of Tipperah, on the 16th February, 1858.

Remarks by the Sessions Judge.—The deceased Akbur contracted a *nika* marriage with the prisoner about eight months prior to his death.

There is no very direct evidence to misconduct on the part of the wife, but the tendency of such evidence as touches on that point is to show that she was not correct in her behaviour, and that her name was associated with that of one Mohomed Alli of Rajahgaon (her former place of residence) in a manner discreditable to a married woman. Enough appears to have been known, or at all events suspected, by the husband to render the union the reverse of happy, but they continued to live together as man and wife, and retired to sleep as such in the same hut on the night of the 24th November, the wife of a brother of the deceased occupying an adjoining hut in the same homestead. At about midnight the prisoner called to her sister-in-law to come in haste as water was issuing from her husband's throat. The sister-in-law instantly obeyed the call, and the prisoner placing her infant child in her arms lit a lamp by the light of which the deceased was seen to be lying dead with his throat cut and the floor to be inundated with blood. According to the sister-in-law, who was a most unwilling witness and very reluctant to disclose what she knew, she did not ask the prisoner, nor did the prisoner tell her, how and by whom the deceased had been thus cruelly murdered. A *kachee*, or saw-edged sickle, the property of the deceased, was lying in the blood which surrounded the body. The teeth are very minute, but very sharp, and there can be no doubt from the appearance presented by the wound that it was effected by this instrument. The neighbours and village chowkeedar were speedily on the spot, but to none of them would the prisoner admit the slightest knowledge of the circumstances under which her husband had been murdered or even a suspicion as to his murderer. This reticence, however, ceased on the commencement of the investigation by the Police seven days, after the death of Akbur, and

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the confession then made by the prisoner was subsequently repeated before the Magistrate with a variation I shall hereafter indicate. I consider it advisable to give the confession verbatim as, if convicted at all, it must be mainly on her own admission.

In the course of the night of the 10th Aughun my husband got up and went to sleep in the house in which the "*dhekee*" used for the purpose of bruising paddy into rice, is placed, I and my infant slept in the northern house and not with my husband. My other son aged about five years also slept with me. I cannot say at what hour of the night what followed occurred, but, as the moon was just setting, Alleah and Esuff residents of the same village with myself, went close to the house where the "*dhekee*" stood, Alleah then entered the house in which I was sleeping, awoke me with a push, and asked me to have connection with him, I answered that I could do no such thing while my husband was sleeping in the adjoining house, Alleah remarked that he supposed I was afraid of my husband, I answered I certainly was. He then said, Well, you are afraid of your husband, but I will finish him "*seemah deeboh*" that is, I will kill him. I replied, If you kill him what will become of my children and who will provide for them, or if the Government should come to hear of it what will they say. After this he went away. Reflecting that my husband was sleeping in the *dhekee* house, and not knowing whether Alleah might not kill him, I went and awoke him, related to him all that had occurred, and brought him away to the house in which I was sleeping. I told him that as he was alone, and it was far from certain whether Alleah might not kill him, it would be well to summon the neighbours. He accordingly did so, but the neighbours occupying the two adjacent homesteads to ours, gave no answer, I awoke my husband's sister who was sleeping in our western house. My husband sang, conversed with her, and finally went to sleep in the northern house, I also lay down with him, the two children lying between us, and thus placed we both fell asleep. About midnight Alleah and Esuff opened the door, and entered the house. Esuff got on my husband's chest, Alleah drew a sickle across his neck and he made a noise. This noise awoke me, and I asked my husband the reason of his making such a noise. Alleah told me that if I gave the alarm he would certainly cut my throat also. Hearing this I called my sister-in-law who was sleeping in the westerly house and brought her to the house in which I was. I lit the lamp, Alleah and Esuff having quitted the house before my sister-in-law entered it, while they were in the house there was no light in it.

While my husband was making a noise and I was feeling about for him, the sickle that was in his, Alleah's hand, came in contact

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..ne, I laid hold of Alleah, but he knocked me down and away, breaking in the attempt the bangles that I wore on ight hand. When Esuff was going out of the house I saw , and recognized him I knew that he was the party who sat my husband's chest, as the house was small, and I was quite ose and in the same bed. On feeling about and touching lleah's sickle close to my husband's neck, and having seen it n his hand, I am certain that he was the party who cut my husband's throat and killed him. On lighting the lamp I and my sister-in-law found that my husband's throat was cut, and that he was dead. I never killed him. On calling out "*dohai*" and making a noise, my neighbours Moolookchand and Subdhun came and found that my husband was dead with his throat cut. The next day the chowkeedar having given information at the thannah, the Police omlah after investigating the matter forwarded the case to the Sudder Station. In answer to questions put to her the prisoner stated, that Akbur had contracted a *neeka* marriage with her in the month of Cheyt. That since the month of Jeyt last she had indulged in an illicit connection with Alleah. Whenever her husband happened to be absent from home, and sometimes even when he was at home, Alleah would come and have connection with her. On the night of the occurrence thinking that her husband was awake she refused to permit Alleah to lie with her. On other occasions thinking him to be asleep, she had had connection with Alleah.

She went on to say that Alleah bears another name, some calling him Alli Mohomed. Alleah's residence is about four or five *kanies* distant from that of her late husband. The sickle belonged to the family and was kept on the western side of the northern house. The prisoner found it on the spot where the murder was committed. It was besmeared with blood.

While Alli Mohomed was drawing the sickle across my husband's neck, I laid hold of it, to prevent his doing so, but he pushed my hand away and cut my husband's throat. I mentioned Esuff's name at the thannah also, but whether it has been written, or not I cannot say.

The discrepancy I have alluded to as existing in the two confessions is on the point alluded to in the last sentence of the confession before the Magistrate. According to her thannah confession her husband was murdered by Alleah or Alli Mahomed and another individual whom she knew not and could not name. Before the Magistrate she mentioned the name of Esuff as assisting Alleah or Alli Mahomed in the murder of her husband.

There is no reason for believing that the Alleah or Alli Mahomed of Dingabhanga (the village of which the murdered man was a resident) entertained an improper connection with the prisoner or bore any enmity towards her husband. He

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appears on the contrary from the evidence of Moolookch the Magistrate's Court to be a moral and well conducted and to have expressed his disgust at the prisoner's heartless and unfeeling demeanour shortly after her husband's violent death, in such a manner as to excite the woman's vindictive feelings and induce her to name him as her guilty paramour instead of Mahomed Alli of Rajahgaon. The evidence throughout the case negatives the existence of illicit intercourse on the prisoner's part with any resident of the village Dingabhanga, while it points directly to Mahomed Alli of Rajahgaon as the person with whom the prisoner kept up a guilty intercourse.

The prisoner's denial to her sister-in-law and neighbours of all knowledge of the manner in which her husband was murdered, is another point which strengthens my impression that her confession does not represent the facts of his death as they really occurred.

The confession, *per se*, furnished such a detail of her husband's murder as, if true, would have been promptly used by the prisoner to exculpate herself, and to remove the grave suspicion which must have arisen against her from the fact of his having been murdered while sleeping by her side in a room occupied by themselves and their children only. My belief is that the prisoner arranged the terms of her confession during the six or seven days which intervened between her husband's death and the investigation by the Police, and that it cannot be relied on as affording a true description of the circumstances of his murder. Both Mahomed Alli of Rajahgaon and Alleah, or Alli Mahomed of Dingabhanga have been released, the former by the Magistrate and the latter by the Darogah. Grave suspicion, but nothing stronger, attaches to the first. The second I regard as entirely innocent, and as having been named by the prisoner partly from animosity and partly perhaps because the prisoner knew that the name of Mahomed Alli was likely to be coupled with her's in connection with her husband's death, and that her confession by inculpating an innocent, but to her offensive, individual of the same name, might ward of suspicion from her real paramour.

The Mahomedan Law Officer finds the prisoner guilty as an accomplice in the murder of her husband, and pronounces her liable to *seasut*.

In this verdict, with a slight difference, I concur, although admitting that it is unsupported by any direct evidence; and that the prisoner's confession is so tainted, with falsehood and duplicity as to render it unworthy of much confidence. But it appears to me that the prisoner is guilty on strong presumption of either having herself murdered her husband or having aided and abetted others in effecting the murder. She was alone with him in the room in which he slept and in which he was found

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g and dead. The instrument with which the murder ommitted was his and her property, and was so placed, and nall of size, as to render it most improbable that any one ring an entirely dark room could have observed where to lay hand on it. It is very sharp, and the Medical Officer osed that with such a weapon the wound on the throat of e deceased might have been inflicted by a single cut. The prisoner is a thick-set muscular woman, and it is quite compatible with probability to suppose that it was her hand alone which inflicted the fatal wound.

But as no eye-witnesses exist to support this view of the case, and as it is not mentioned by the prisoner's confession, I would convict the prisoner on strong presumption of aiding and abetting in her husband's murder which, could not, under the circumstances of scene and time, have been effected without her knowledge and participation, and would sentence her to imprisonment for life with labor suitable to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The Sessions Judge has stated correctly the particulars of this case. After weighing the whole evidence, I concur with him in thinking, that it is impossible to credit the prisoner's confession, and it is equally impossible to believe, that, even if she did not commit the murder of her husband with her own hands, she was *not guilty* of aiding and abetting in it. Her participation in the crime is under the circumstances almost self-evident. I convict her therefore on violent presumption of aiding and abetting in the murder of her husband, and sentence her, as recommended by the Sessions Judge, to imprisonment for life with labor suitable to her sex.

QUARTERLY

No.

FOR APRIL, MAY, AND JUNE.

1858.

NOTICE.

WITH reference to Government Order, dated the 27th May, 1857 No. 2783, *Quarterly* Numbers only of Selected cases are published.

REGULAR CASES.

APRIL,

1858.

REGULAR CASES.

APRIL, 1858.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT AND ALLUM ZELLADUR
versus
RAMSOONDER BHUTTACHARJEA.

Rungpore.

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Case of RAMSOONDER BHUTTACHARJEA.

The prisoner acquitted upon the insufficiency of the evidence to prove the charge of embezzelment, the Court finding that there was no clear and consistent proof, as there should be in all such cases, of the *fraudulent appropriation* of the money.

Held that where a person is charged with embezzlement, under Act XIII. of 1850, and the sum alleged to have been embezzled is made up of balances or items of unadjusted account, it is necessary

CRIME CHARGED.—Embezzling a sum of Rs. 339-2, the property of his masters Messrs. J. and R. Watson, while in their employ.

CRIME ESTABLISHED.—Embezzling a sum of Rs. 339-2 of his masters Messrs. J. and R. Watson, while in their employ.

Committing Officer.—Mr. A. J. Jackson, Officiating Joint-Magistrate of Bograh.

Tried before Mr. F. A. Glover, Officiating Sessions Judge of Rungpore, on the 2nd February, 1858.

Remarks by the Officiating Sessions Judge.—Prisoner pleads "*not guilty.*" Ramsoonder Bhuttacharjea was employed as a gomastah in the Sultangunge silk Factory belonging to Messrs. J. and R. Watson, and in that capacity superintended the purchase of silk cocoons, on account of which he was supplied with funds from the head Factory at Surdah. It appears that in the month of Jeyt, 1263, B. S. or 1856, A. D. he absconded without accounting for the monies in his possession received on account of the factory, amounting to Co.'s Rs. 339-2. The immediate cause of his absconding was his being summoned to the head factory by the manager Mr. Bashford (witness No. 7,) to give in his accounts, and to explain various deficiencies both in the weight and quality of the cocoons sent in: instead of attending to the summons, he made off, and was not heard of till a long time afterwards, when he was apprehended in the Pubna district and sent in to the Joint-Magistrate of this place.

His defence is that he neither absconded, nor made away with any of his employers' property, he fell ill with disease in the eyes, and went to Calcutta for medical treatment, previously making over charge of the monies in his possession to the Mohurrir of the Factory.

This Mohurrir, who was one of the principal witnesses in the case, died before the trial. The fact, however, of the prisoner being employed as gomashta, and having one day disappeared

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from the Factory is proved by the witnesses named in the margin.* Secondary evidence as taken to attest the deposition of the deceased Mohurrir, from which it appeared that the prisoner had absconded in debt to the Factory Co.'s Rs. 339-2, made up partly by balances before in his hands and partly by the proceeds of Bank of Bengal Notes for Co.'s Rs. 200, the money upon which he had obtained from the Khumah zemindary Cutcherry, where he had been in the habit of exchanging notes on account of the Factory. The Factory account books are not attested, indeed the only person who could have attested them is dead, but the record shows a letter purporting to have been sent by the prisoner to the agent Mr. Bashford, in which the writer after expressing astonishment at being made the subject of such a charge, admits that there was the sum of 339 Rs. in his hands before he left the factory.

* No. 2, Ashina Nushya.
,, 3, Chanda.
,, 4, Hoormat.

to state under which of its provisions the charge is brought. The course to be observed in such cases was laid down by the Court (Present: Mr. J. R. Colvin,) in the case of Gungadhur Sircar and another, 31st March, 1853.

On the authenticity of this letter therefore the whole case turns.

The witness named in the margin,† deposes to the prisoner's signature and swears to its being his. Mr. Bashford is able to read and speak Bengali well, and from the number of times he had seen the prisoner's signature, was perfectly well acquainted with it, and had no doubt that the signature at the foot of the letter was the prisoner's.

† No. 7, Mr. Bashford.

The prisoner admits having been a factory servant, his defence is, that feeling very ill, he made over charge of his papers and money to the deceased mohurrir, and made arrangements with the omlah of Khumah Zemindary Cutcherry from whom 200 Rs. were due on account of Bank of Bengal Notes given to them some time before, that the money should be paid to Allum Jelladar (the prosecutor) on behalf of the factory.

Several witnesses were called for the defence, they all state, that the 200 Rs. which were left due to the factory when the prisoner went away ill, were duly paid to the Mohurrir.

The Law Officer's *futwa* convicts the prisoner of the crime charged, in which finding I concur for the following reasons.

The fact of prisoner's being a trusted servant of the Factory and of his having gone away from it without the leave or sanction of his employer are proved, and indeed admitted by the prisoner himself. He admits moreover that the sum of Rs. 339-2 was in his charge and the only portion of the money for which he attempts to account is the 200 Rs. due on the Bank Notes, the remainder of the money is indeed said to have been expended in various ways; but the defence is in this particular unsupported. With regard to the 200 Rs. the evidence produced by the prisoner does not satisfy me, the first

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witness was a village Gomashtah, and the day on which the transaction is said to have taken place was the first day of the *poorna* or collecting rents, of all persons the most unlikely one to have been at the Cutchery on such a day was the gomashta. The others depose, that the prisoner went away, having made an arrangement that the money was to be paid to Allum on the part of the factory, and that the money was afterwards paid to the factory mohurrir since dead, the only proof of this payment is the evidence of the men. No receipt for the money appears to have been taken. No acknowledgment was given to Allum, that the money was due, whilst Allum himself stoutly denies that the transaction ever occurred as stated. The witnesses morever remember perfectly well that happened at a casual meeting more than two years ago, but they could not tell how many notes there were for 200 Rs. or when they were given by the prisoner.

Again, were the prisoner's story true, that he was anxious to get away and make over his accounts, why did he want the cash at all: he could have made over the notes for it as easily as cash, easier indeed.

The witness (Ramdhan) No. 6, who proved before the Joint-Magistrate that the prisoner took the money for the Notes and went away with it, was unfortunately not present at the trial, but his statement made before the Lower Court is amply corroborated.

Add to this, that the prisoner never found that he was ill or obliged to leave the factory suddenly until he received a summons from Mr. Bashford to go to Surdah, and the falsity of his defence appears evident.

I convict him under Act XIII. of 1850, of feloniously stealing Co.'s Rs. 339-2 the same being in his possession as trust, and sentence him (in consideration of his age) to two years' imprisonment with labor, but without irons, and to pay a fine under Act XVI. of 1850, of Co.'s Rs. 339-2 for the benefit of the party robbed.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The prisoner was committed by the Magistrate on the charge of embezzling a sum of Rs. 339-2-0, the property of his masters Messrs. J. and R. Watson and Co., while in their employ.

The Sessions Judge convicts the prisoner under Act XIII. of 1850, of feloniously stealing Co.'s Rs. 339-2-0, the same being in his possession on trust.

It does not appear that the charge against the prisoner was laid by the Magistrate under Act XIII. of 1850, but if it was, it is not specified by him under which of its provisions, nor does the Sessions Judge state under which of them he tried the case and passed sentence.

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This is necessary where the sum alleged to have been embezzled is made up, as in this case, of balances or items of unadjusted account.

It would then be seen whether with reference to Section 11 of the Act the transactions extend or not over a period exceeding six calendar months.

The course to be observed in such cases was laid down by this Court (Present: Mr. J. R. Colvin,) in the case of Gungadhur Sircar and another 31st March, 1853.

In the present instance there are no attested accounts whatever. Such as are on the record were filed nearly a year after the charge was first brought against the prisoner when he was arrested.

The witnesses do not prove the embezzlement, and most of them speak from hearsay. The case turns, as the Sessions Judge states, entirely on the authenticity of a letter which the prisoner is alleged to have written to Mr. Bashford the manager of the Factory and one of the witnesses. There is no other direct evidence. In this letter the prisoner admits the balance, but gives an explanation of it, and his witnesses support his statement. Even if the authenticity of the letter, which the prisoner denies having written, be on the evidence of Mr. Bashford admitted, it does not prove the embezzlement. The prisoner's long absence, after the charge had been brought against him, is of course a suspicious circumstance. But in order to convict him of the charge much more evidence than has been adduced is necessary. There must be clear and consistent proof of the fraudulent appropriation of the money.

I observe that the deposition of Mr. Bashford taken before Mr. Chapman, the acting Magistrate of Rajshye, is *without date.* The Officiating Magistrate of Bograh has put down in his Calendar Mr. Bashford as one of the witnesses, but he does not appear to have taken his evidence. This is an important omission. He should have been examined in the presence of the prisoner, who should have been allowed an opportunity of putting questions to the witness regarding the letter which he was charged with having written.

Under these circumstances, not being satisfied with the evidence, I acquit the prisoner and direct his immediate release.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT AND KANAY NUNDEE

versus

GUNESH DIGWAR TETOOLYA CHOWKEEDAR (No. 25,) DINONATH ROY TETOOLYA BAGDEE (No. 26,) KAMOO TETOOLYA (No. 27,) FAQUIR NOLAY (No. 29,) KISTO LAHAR (No. 30,) NOYAN TETOOLYA (No. 31,) BHOIRUB TETOOLYA (No. 32,) AND DAMOO TETOOLYA (No. 33)

East-Burdwan.

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The sentence passed by the Sessions Judge was confirmed in appeal, excepting upon the prisoners Nos. 28, 34, 35 and 36, who although acquitted of the crime were ordered to furnish security for good conduct, and failing to do so to be imprisoned for 3 years each with labor in irons.

The Court reversed the latter part of the sentence, holding, that it was not sanctioned by the authorities to which the Sessions Judge referred viz. Circular Order No. 72, of the 2nd August, 1810 and Construction No. 881, of the 18th April, 1834.

CRIME CHARGED.—Dacoity with wounding in the house of Kanay Nundee and plundering therefrom property to the value of Rs. 485-13-6, prisoners Nos. 25, 29 and 35 being employed as Police chowkeedars at the time of the occurrence.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer.—Mr. H. B. Lawford, Magistrate of East-Burdwan.

Tried before Mr. H. M. Reid, Officiating Sessions Judge of East-Burdwan, on the 8th February, 1858.

Remarks by the Officiating Sessions Judge.—All the prisoners plead "*not guilty.*"

It appears from the deposition of the prosecutor that his house was attacked by a large gang of dacoits at about midnight of the 16th Kartick last (31st October, 1857.) On the prosecutor getting up and opening the door of the room in which he had been sleeping, about twenty of the dacoits entered the house and commenced breaking open the boxes and removing from them their contents. The prosecutor's nephew Ballye Nundee in the mean time armed himself with a sword, and commenced hitting about him at the dacoits in every direction, and, an alarm having been raised, the villagers and the pharee police came to the spot, and commenced pelting the dacoits with brickbats and stones, and the dacoits after making considerable resistance and shooting at the villagers with bows and arrows made their retreat, leaving however one of their number the prisoner No. 25 Gunesh Digwar, a prisoner in the hands of the villagers. He had been first of all seized by the prosecutor, but managed to escape from him, and was subsequently knocked down and secured by the pharee police. The witness No. 1, had been laying about him in the meantime with his sword, but he was at last obliged to desist on being wounded by one of the dacoits with an arrow, and in the scuffle he lost the sword which was carried off by the dacoits. Before losing it, however, he had inflicted two severe blows with it on one of

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the dacoits. The prosecutor recognized the prisoner No. 25, as being the person with whom he had struggled, but he did not recognize any of the other dacoits. He identified, however, as his property a large brass *ghurra* and a bundle of red thread which were found on the spot where the villagers contended with the dacoits.

The night of the occurrence was a bright moonlight one, and several of the dacoits were recognised by the villagers,* and on the Police searching the villages, where the confession made before them, on his arrest by the prisoner No. 25, led them to suppose that the wounded dacoits would be found, they found the prisoner No. 26, Denonath lying concealed in a rice-field with two freshly inflicted sword-cuts upon his shoulders.

* Wit. No. 1, Bholaram Nundee.
" " 2, Bholanath Koibutto.
" " 3, Russick Patro.
" " 4, Nundkoomar Kesb.
" " 5, Bhoirub Napit
" " 6, Balgobind Missree.
" " 7, Modhoo Baboo.
" " 8, Ruhmut Ali Burkundaz.
" " 9, Gholam Roy Sirdar Ghatwal.
" " 10, Bhoyrub RoyGhatwal.
" " 11, Bisso Bagdee Ghatwal.
" " 12, Cheedam Bag Chowkeedar.
" " 13, Kashinath Koibutto.
" " 14, Gopaldas Bonnick.

Some of the other dacoits were found with wounds upon them, inflicted apparently with the blows of sticks and stones, and the prisoner No. 32 Bhoyrub Tetoolya, on being arrested confessed† before the Police to having taken part in the dacoity, and he implicated prisoner No. 26 and several of the other dacoits as having been in company with him. The prisoner No. 25, besides confessing before the Police,‡ made a second confession before the Magistrate.§ The prisoners whom I have convicted of the charge have adduced a great number of witnesses in support of their several defences.

† Wit. No. 23, Muden Dey.
" " 24, Kisto Day.
" " 22, Koilaschunder Roy, Darogah.

‡ Wit. No. 13, Kashinath Koibutto.
" " 22, Koilaschunder Roy, Darogah.

§ Wit. No. 26, Radhamohun Sen.
" " 27, Koorarum Sircar.

The defence of the prisoner No. 25, Gunesh is to the effect that he went to the village Balsee (the place where the dacoity took place and which is about four or five *coss* from his village) to procure the water in which the idol had been washed, and thereby to cure his illness, and that when lying there some four or five people came to beat him, and that he does not remember any thing further. His witnesses depose|| to having seen him going one day towards Balsee to procure the Idol water.

|| Wit. No. 46, Noboo Khan.
" " 47, Goyaram Medha.
" " 48, Roopchand Totee.

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The prisoner No. 26, pleads that the wounds on his shoulders were caused by his falling one day from a *palm* tree, and his body striking the roots of the tree in his fall. Of the four witnesses* examined for his defence, one (No. 51,) says he knows nothing of it, and the other three depose to having *heard* that the prisoner had wounded himself in the manner mentioned. They did not see him fall, nor see him afterwards in his wounded state.

* Wit. No. 49, Shadoochurn Khan.
" " 50, Khettoo Sheikh.
" " 51, Bhoirub Banick.
" " 52, Khosal Sheikh.

The prisoner No. 27, Kamoo Tetoolya pleads an *alibi.* That prisoner No. 25 is at enmity with him; as is also prisoner No. 32, and that they have named him in their confessions in consequence. His witnesses† depose to the *alibi* set up by the prisoner to the effect that he was on his watch at Tensoolee, Indigo Factory (which is four *coss* from where the dacoity took place) on the night of the dacoity, also to there being enmity between prisoners Nos. 25 and 27.

† Wit. No. 53, Neranjun Ghatwal.
" " 54, Bhoirub Luteo Ghatwal.
" " 55, Mohur Mundle.
" " 56. Kopel Mosulman.
57, Ramdhone, Chowkeedar.

The prisoner No. 29 pleads that he was at his own house sick on the night of the dacoity, and that he was wounded by the Police with arrows, &c. after his arrest. His witnesses‡ six in number depose, four of them of their own knowledge, and two from hearsay, to the prisoner's *alibi.*

‡ Wit. No. 61, Seedam Chottoo, Gomashtah.
" " 62, Luchmun Roy, Sirdar.
" " 63, Godai Mokhun.
" " 64, Ram Mokhun.
" " 65, Facquir Shooree.
" " 66, Degan Shooree.

The prisoner No. 30 pleads an *alibi* and good character. His witnesses§ depose to his having been at the village of Letoobaree, which is six *coss* from Balsee, on the 16th Kartick, the date of the dacoity, and that he went to Beersingla on the 17th Kartick. Also that he has some trade and three ploughs.

§ Wit. No. 67, Roghoonath Lohar, Chowkeedar.
" " 68, Golap Dovari.
" " 69, Facquir Roy, Ghatwal.
" " 70, Gogaram Lohar.

The prisoner No. 31, Noyan Bagdee, pleads that he was on his watch on the night of the dacoity, and that prisoners Nos. 25 and 32, have named him out of enmity. His witnesses|| depose to his *alibi*, but none of them know any thing about any dispute between him and prisoner No. 25, and only one of them (witness

|| Wit. No. 16, Lukhoenarain, Ghutwal.
" " 71, Bhoirub Doss, Boistub.
" " 72, Nobin Tetoolya.
" " 73, Kewaram Doss.
" " 74, Gungaram Kolloo.

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No. 71,) deposes to the existence of a dispute between prisoners Nos. 31 and 32.

The prisoner No. 32, Bhoirub Tetoolya, pleads an *alibi*, but his witnesses* have deposed to nothing satisfactory on his behalf. On the contrary two of them have deposed to his being a thief.

* Wit. No. 75, Gunga Gobind Mundle.
" " 77, Hurreeram Mundle.
" " 78, Gunesh Jowly, Chowkeedar.

The prisoner No. 33, Damoo Tetoolya, pleads an *alibi*, and that prisoners Nos. 25 and 32, have named him in their confessions owing to their having had disputes with him about caste, &c. &c. His witnesses† have deposed to the *alibi*, and two of them (Nos. 81 and 83,) have deposed to the existence of differences between the prisoner and prisoners Nos. 25 and 33.

† Wit. No. 79, Mooktaram Tetoolya.
" " 80, Bahadoor Tetoolya.
" " 81, Roop Gain.
" " 82, Seeroo Tetoolya.
" " 83, Khetoo Tetoolya.
" " 84, Gossain Gowalla.

The following shews the extent of the evidence, direct and circumstantial against the several prisoners included in this conviction-statement, together with the particulars of the former cases in which they have severally been implicated or brought before the Magistrate's and Sessions Court.

Prisoner No. 25, Gunesh Tetoolya Bagdee *Chowkeedar*. Was arrested in the act, I confessed before the Police and the Magistrate. Has before been imprisoned for one month for petty theft, and was also arrested in a former case of dacoity with wounding, and released from want of proof.

Prisoner No. 26, Denonath Roy, was arrested with two recently inflicted wounds on his back, which the medical officer is of opinion were inflicted with a sword, and could not have been caused in the manner stated by the prisoner. Is implicated in the Mofussil confession of the prisoner No. 32, and is proved to have been absent from his village on the night of the dacoity.

Prisoner No. 27, Kamoo Tetoolya, is implicated in the Mofussil confession of prisoner No. 25 and was recognized by witnesses Nos. 4, 5, 9, 10, 11, 12 and 14.

Prisoner No. 30, Kisto Lohar, was absent from his home on the night of the dacoity, was recognized by witnesses Nos. 9, 10, 11, 12, 13 and 14. Is a bad character, and was once before sentenced to ten years' imprisonment for dacoity, but released in appeal.

Prisoner No. 31, Noyan Tetoolya Bagdee. Is named in the Mofussil and Foujdary confessions of prisoner No. 25, and in the Mofussil confession of prisoner No. 32 and is sworn to by witnesses Nos. 9, 10 and 11. Has before been imprisoned in a

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case of theft and receiving (six months) in one of affray with homicide (eighteen months) and (one year) in default of security for good conduct.

Prisoner No. 32, Bhyrub Tetoolya, confessed before the Police to having joined in the dacoity.

Prisoner No. 33, Damoo Tetoolya, is named in the Mofussil and Foujdary confessions of prisoner No. 25, and in the Mofussil confessions of prisoner No. 32, and is sworn to by witnesses Nos. 9, 10, 11, 12, 13 and 14. He has before been imprisoned eighteen months for affray, and one year, in default of security, as a bad character.

Considering the crime of dacoity with wounding fully established against the above eight prisoners and that the evidence which they have severally brought forward in support of their defences, can have no reliance placed upon it in the face of the direct evidence advanced for the prosecution, I have sentenced them as under.

Prisoner No. 25, Gunesh Digwar Tetoolya Chowkeedar, to fourteen years' imprisonment, and two years in lieu of corporal punishment, total sixteen years; the prisoners No. 27, Kamoo Tetoolya, No. 29, Faquir Molay *Chowkeedar*, No. 30, Kisto Lohar, No. 31, Noyan Bagdee, and No. 33, Damoo Tetoolya to fourteen years' imprisonment and the prisoner No. 26 Denonath Roy and No. 32, Bhoirub Tetoolya to twelve years' imprisonment each, all with labor in irons in banishment.

The other prisoners have been released from this specific charge for the reasons mentioned in acquittal-statement, No. 8, but four of the number, prisoners Nos. 28, 34, 35 and 36, have been ordered to furnish security for their good conduct, and failing to do so, to be imprisoned for three years each with labor in irons, they having been named in the confession of the prisoner No. 32, and the circumstantial evidence, though insufficient for the conviction of the dacoity, being of such a character as to warrant a strong suspicion that they were actually parties to the crime.

The conduct of the villagers, and of the pharee jemadar and burkundazes is very commendable, the subsequent enquiries appear to have been well conducted by the Burdwan Police and the *serishtadar* of the Magistrate's Court under the superintendence of Mr. R. V. Cockerell, the Assistant Magistrate, who was on the spot very shortly after the dacoity occurred.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The prisoners in appeal have been defended by Baboo Kissen Saka Mookerjea.

The Sessions Judge has entered fully into the particulars of this case. After carefully going through it, I see no reason whatever to interfere with the sentence he has passed upon the prisoners Nos. 25, 26, 27, 29, 30, 31, 32 and 33, who, upon clear

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and consistent evidence, have been convicted of the crime laid to their charge. The appeal therefore of these prisoners is rejected.

The other prisoners Nos. 28, 34, 35 and 36, have been acquitted by the Sessions Judge, but ordered to furnish security for their good conduct, and failing to do so to be imprisoned for three years each *with labor in irons*.

Their pleader has urged in their behalf that the evidence does not show sufficient ground for demanding from them security for good conduct; but even if on the trial of the case such a demand should have been considered necessary by the Sessions Judge, he was not competent to sentence them, in default of giving security, to labor in irons in addition to imprisonment.

From the evidence on the record, it appears to me that there were reasonable grounds for calling upon the prisoners to furnish security for good conduct; but the Sessions Judge will be directed to explain under what Law he sentenced the prisoners in default of furnishing the security to be imprisoned *with labor in irons*.*

* *From the Officiating Sessions Judge to the Register to the Court of Nizamut Adawlut.*

I have the honor to report with advertence to the latter portion of the Remarks passed by the Court, under date the 8th instant, on the trial of Gunesh Digwar Tetoolya Chowkeedar and others, that the demand for security made by me in the case of four of the acquitted prisoners was made under the provisions of Clause 2, Section 2 and Clause 3, Section 9, Regulation VIII. of 1818, and that the award of labour (in irons) was passed with advertence to the Court's Circular Order No. 72* dated the 2nd August, 1810, and their Construction No. 881 dated the 18th April, 1834.

* Page 24, New Edition.

Resolution of the Presidency Court of Nizamut Adawlut under date the 13th May, 1858. (Present: D. I. Money, Esq. Offg. Judge)

The Court, having received the explanation called for from the Sessions Judge, are of opinion that the Circular Order and Construction referred to, give no sanction to the passing of a sentence of imprisonment *with labor in irons* upon prisoners failing to furnish security for good conduct. The Construction cited only gives permission to the *Magistrate* to employ prisoners confined till they give security for their future good behaviour, in the construction of public works or the repair of public roads, under certain restrictions, and from the strict injunction therein contained, that the Magistrate will endeavour as much as possible to keep prisoners of the above description distinct from prisoners convicted of *specific offences*, it would seem, that the imposition of fetters was not contemplated: whether in some cases it may be necessary for the Magistrate to impose them for the preservation of jail discipline is a question not before the Court.

That part of the Officiating Sessions Judge's order which sentences the prisoners No. 28, Gopal Roy Tetoolya, No. 34, Gour Janlia, No. 35, Narain Tetoolya and No. 36, Madho Tetoolya, to *labor in irons*, not having the sanction of law, the Court annul the same.

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In a Bengali proceeding attached to the record, reference is made to Clause 3, Section 9, Regulation VIII. of 1818. If the sentence was passed under the provisions of this Law, the Sessions Judge will point out in what way they sanction it.

PRESENT:

D. I. MONEY, ESQ., *Judge.*

GOVERNMENT

versus

KAMAL CHUNG (No. 1,) OODHUB CHUNG (No. 2,) SOODHARAM CHUNG (No. 3,) MUSST. MEGHEE (No. 4,) MUSST. BHOOBUNPREYA BYSNUBEE (No. 5,) AND MUSST. SHOOBEE (No. 6.)

Tipperah. 1858. April 15. Case of KAMAL CHUNG.

The prisoners Nos. 4 and 5, convicted of culpable homicide by the administration of drugs given to cause abortion were sentenced, as recommended by the Sessions Judge to 14 years' imprisonment with labor suited to their sex, and the prisoner No. 1, as an accomplice in the crime to imprisonment for the same period with labor in irons.

CRIME CHARGED.—1st count, wilful murder of Musst. Rooposhee; 2nd count, administering deleterious drugs to Musst. Rooposhee with a view of procuring abortion and thereby causing her death.

Committing Officer.—Mr. F. Tucker, Officiating Magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, Sessions Judge of Tipperah, on the 20th February, 1858.

Remarks by the Sessions Judge.—The deceased woman, Musst. Rooposhee, becoming a widow, returned to her former home to reside with her brothers, the prisoners Oodhub Chung No. 2, and Soodharam Chung No. 3. This occurred two or three years ago when she was probably thirty years of age.

She brought with her two children, with whom she occupied a separate house in the family homestead, and shortly after her arrival appears to have indulged in an improper intimacy with the prisoner Kamal Chung No. 1, and to have become pregnant in consequence. The charge against the prisoners is that they administered, or caused to be administered, to her some medicine to bring about abortion, the use of which resulted in the woman's death.

There is but one eye-witness,* the wife of the prisoner Oodhub Chung No. 2, and an inmate of the same home with the deceased. After deposing to the intimacy existing between the prisoner Kamal Chung No. 1 and the deceased, this witness stated that she noticed circumstances of a character to lead her to believe that her sister-in-law was pregnant. These were, chiefly, a cessation of

* No. 1, Joonca's Mother *alias* Bonnca's Mother.

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the menstrual discharge, and an enlargement of figure. Her deposition proceeds in all essential respects as follows.

In the month of Poos last when deceased was five or six months advanced in pregnancy, the prisoner Kamal Chung No. 1, brought the prisoner Meghee No. 4, (his wife's grandmother) and the prisoner Bhoobunpreya Bysnubee No. 5, to his house one morning at about 9 A. M. deponent subsequently heard that Kamal Chung then administered to the deceased some medicine prepared by these women. The next day about 9 A. M. the prisoner Meghee No. 4 made Rooposhee swallow a pill in her own house, the prisoner Bhoobunpreya No. 5, being seated in the room at the time. Deponent did not, however, see the latter administer any medicine. Deponent's husband and brother-in-law, prisoners Oodhub Chung No. 2 and Soodharam Chung No. 3, had gone to labor in the fields, and were not present when the pill was given. The prisoner Kamal Chung No. 1, subsequently arrived and seating himself at Rooposhee's door would not allow the deponent to go in to her. Deponent heard Rooposhee complain of a pain in her stomach. Going to fetch water she observed from a back door two lumps of blood each about the weight of a seer or a seer and a quarter lying on the floor inside the house, Rooposhee was seated at a short distance from the blood in a bent posture, and the prisoner Meghee No. 4, was standing near her. The prisoner Kamal Chung No. 1 was still seated at the door, and the prisoner Bhoobunpreya was standing outside near the back door at a short distance. Deponent after returning with water went to the eastern house. The prisoner Shoobee No. 6, was not present on that day. About noon two days after the above occurrence, deponent saw the deceased seated in the compound of the house eating beetle. Kamal Chung No. 1, Meghee No. 4, and Bhoobunpreya No. 5, afterwards went away to Kamal Chung's house. Deponent went to the house occupied by the deceased but saw no traces of blood, it was washed away with water, Rooposhee after taking her meal retired to rest. She and Kamal Chung desired deponent not to reveal the matter to any one, and in the event of her doing so held out threats. Deponent's husband and his brother were not at home that day. The next day they returned but she did not tell them what had occurred. Two days after Rooposhee died. The evening previous to the day of her death the deceased called deponent's husband and his brother and told them that, being pregnant, Kamal Chung had brought two women and administered medicine to her which had caused abortion. After the arrival of the police, deponent at their request searched and found a pill tied in a rag and delivered it to them. Three days previous to the occurrence of the abortion deponent saw the prisoner Bhoobunpreya make Rooposhee swallow something in a piece of plantain.

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Deponent afterwards said that it was the prisoner Meghee No. 4, who had administered it, and Bhoobunpreya No. 5 was with her.

In the evidence I have thus abbreviated, there is an obvious desire to screen the prisoners Oodhub Chung No. 2, and Soodharam Chung No. 3, which is perfectly natural, the first being the witness's husband and the second her brother-in-law. But it suffices, I think, to establish the fact of the deceased woman's pregnancy and of the fatal attempt to relieve her and her paramour from the consequences of their incontinence. The evidence that follows, though wholly circumstantial, corroborates that of the single eye-witness in many material respects, and explains the manner in which the occipital bones of a fœtus, were delivered to the Police by the prisoner Oodhub Chung No. 2. These remains appear to have been twice concealed. In the first instance by the prisoner Kamal Chung No. 1, and in the second by the prisoner Oodhub Chung No. 2, who dug them up from their original place of deposit and buried them elsewhere.

No. 18, Roymony Chung.
19, Phadoo Chowkeedar.
6, Ramruttun Kur.
20, Dabul Chung.
21, Mohomed Arip.
7, Roopchundro Sein.
22, Bungsi Chung.
9, Bholanath Doss
23, Rajchunder Chowkeedar.

Before alluding to the confessions, which constitute after all the mainstay of the case for the prosecution, I will refer to the evidence of the Medical Officer Baboo Ramkenoo Dutt.

It is, I think, a matter of regret that the Medical Officer's apparent impression that the case was one which rendered it inexpedient to disturb the contents of the stomach and uterus prevented his more thoroughly examining the state of those organs. He found the uterus enlarged and full of coagulated blood, the latter however being a circumstance compatible alike with disease connected with, or apart from, parturition. Regarding the enlargement of the uterus, the Medical Officer expresses himself more decidedly. He attributed the circumstance to the uterus having contained, in the first instance, a fœtus and to the enlargement continuing after the expulsion of the fœtus in consequence of its being succeeded by coagulated blood.

Although, therefore, unable to afford the Court a distinct opinion as to the cause of the woman's death, the Medical Officer's explanation of the enlargement of the womb is consistent with the conclusion that she was certainly pregnant and must have been so shortly before her death.

It would appear that expulsion of the fœtus ensued on the third day after the administration of medicine to the deceased

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in her own house, and that the death of the mother took place two days after her violent and unnaturally caused delivery.

The Government chemical examiner reported that he could detect no poison in the substances sent to him, that is the stomach and uterus forwarded by the district Medical Officer.

The confessions recorded by the Police and subsequently by the Magistrate are on the whole consistent with each other, that of the prisoner Kamal Chung No. 1, being somewhat modified before the Magistrate as regards the direct share borne by himself in causing the woman's death.

The evidence of the sole eye-witness Joomea's mother *alias* Bonnea's mother No. 1, is in accordance with the confessions of the prisoners Oodhub Chung No. 2, Soodharam Chung No. 3, and Musst. Shoobee No. 5. That is to say, as the prisoners Oodhub Chung No. 2, and Soodharam Chung No. 3, deny all participation in the measures adopted to cause abortion, so she exonerates them from having taken any share in the administration of drugs to the deceased. Their statement is, that they were ignorant of what was proceeding until their sister Rooposhee being on the point of death, called them to her side and informed them of the cause of her illness. Such, too, is the deposition of the witness Joomea's mother *alias* Bonnea's mother No. 1, on the same point, while the explanation afforded in the Sessions Court by the prisoner, Oodhub Chung No. 2, of the circumstances under which he produced the occipital bones of the fœtus is not improbable. He stated that he removed them from the spot in which the prisoner Kamal Chung No. 1, and the deceased Rooposhee had in the first instance, concealed them, because he feared the former might remove them prior to the arrival of the police and thus defeat the ends of justice, and that he was consequently enabled to produce them to the Darogah when it became desirable to do so The intimation sent to the thannah was forwarded by the prisoner Oodhub Chung No. 2, through the village Chowkeedar, shortly before his sister expired, a circumstance in accordance with his so-called confession. It is true that the prisoners Oodhub Chung No. 2, and Soodharam Chung No. 3, are freely named by their fellow-prisoners as the originators of the act to which their sister's death is attributable, but implication by one prisoner of another is not evidence, and as their own confessions and the evidence of the witness Joomea's mother *alias* Bonnea's mother No. 1, do not support the statements of the prisoners who unquestionably brought about the woman's death, I think they are entitled to the benefit of the doubts I entertain of their guilt and in concurrence with the Mahomedan Law Officer, direct their release.

The case as regards the prisoner Musst. Shoobee is much of the same character. Her confession is not a confession of guilt,

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but of involuntary acquaintance under circumstances of mere accident, with the guilt of others, and the witness Joomea's mother *alias* Bonnea's mother No. 1, does not implicate her as having taken any part in the administration of the drugs to which Musst. Rooposhee's death is attributable. She does not leave the Court, free from suspicion any more than do the prisoners Oodhub Chung No. 2 and Soodharam Chung No 3, but the Mahomedan Law Officer concurs with me in thinking that there is no evidence to support a conviction in her case any more than there is in theirs.

We agree in convicting the prisoners Musst. Meghee No. 4 and Musst. Bhoobunpreya Bysnubee *alias* Bepole No. 5, on the second count of the indictment, that is to say, we find them guilty of the culpable homicide of Musst. Rooposhee by the administration of drugs given to cause abortion, and the prisoner Kamal Chung No. 1, of being an accomplice in the crime.

With reference to the Sudder Court's recent judgments in similar cases, and to the shocking prevalence in this district of the crime of which the prisoners Kamal Chung No. 1, Musst. Meghee No. 4 and Musst. Bhoobunpreya Bysnubee *alias* Bepole No. 5, have thus been convicted I would respectfully recommend a sentence of fourteen (14) years' imprisonment, accompanied in the case of the male prisoner with labor in irons, and in that of the female prisoners with labor suited to their sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) There can be no doubt from the evidence including their own confessions, of the guilt of the prisoners. The particulars of the case have been fully and correctly stated by the Sessions Judge. This atrocious crime appears to be on the increase in his district. I sentence the prisoners as recommended by him, the prisoner No. 1, to fourteen years' imprisonment, with labor in irons, and the prisoners Nos. 4 and 5, to the same period, with labor suited to their sex.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT AND AMIRUDDEE SHEIK

versus

NEYAMUT KHALASEE (No. 4,) AND HARAN KHAN (No. 5.)

Jessore.

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The Court acquitted the prisoners on the ground that the evidence was not sufficient to convict them on the 3rd count, of which they were found guilty by the Sessions Judge viz. *of being accessaries after the fact,* it not being shown *what fact,* whether, as per 1st count, of affray with *murder* of Jamiruddee, or affray with *wounding* of Jamiruddee as per part of 2nd count.

It was held, that the prisoners could not be found guilty of being accessary after the fact

CRIME CHARGED.—1st count, affray with murder of Jamiruddee of Satrejetpore on the 20th of April, 1857; 2nd count, affray with wounding and carrying away the same Jamiruddee and wounding Kamiruddee and Anaruddee, witnesses Nos. 1 and 2, the same Jamiruddee not having since been found; 3rd count, as accessaries after the fact in carrying away Jamiruddee of Satrejetpore either dead or in a dying state wrapped up in mats.

Committing Officer.—Mr. C. B. Skinner, Joint-Magistrate of Magoorah.

Tried before Mr. W. S. Seton-Karr, Officiating Sessions Judge of Jessore, on the 5th January, 1858.

Remarks by the Officiating Sessions Judge.—With reference to the Court's Resolution* No. 183 dated the 16th March, 1858, I have the honor to transmit herewith to be laid before them the proceedings on the above trial held at the station of Jessore on the 5th of January last.

For the particulars of this affray see the remarks on trial No. 2,† held in September 1857, Calendar No. 8, for July of

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* *Resolution of the Presidency Court of Nizamut Adawlut.*—(Present: D. I. Money, Esq.,) dated the 16th March, 1858.

Read a letter No. 8, dated the 9th ultimo, from the Officiating Sessions Judge of Jessore, forwarding a petition of appeal from Neyamut Khalasee and another together with the original proceedings connected with their commitment and trial.

This case cannot be taken up in appeal. The Court (present: Mr. H. T. Raikes) on reviewing the monthly statements of the Sessions Judge connected with the Sessions of jail delivery held by him in the month of January last, pointed out to him that he was not competent to pass sentence in the case and directed him to refer the trial for the sentence of this Court.

The directions of the Court must be complied with. The record of the case will be returned to the Sessions Judge for this purpose, and when the case comes up before the Nizamut Bench as a referred trial, the prisoner's pleader and the Government pleader, who have both testified their assent to the propriety of the remand, will have an opportunity of pleading upon the merits.

† This case was originally treated by the Joint-Magistrate as an affray in which both parties were concerned, and in which both were, more or less, to blame, that is the talookdars and villagers of Umedpore on the one hand and the servants of the Choulia factory belonging to Mr. Savi, Junior, on

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that year. The prisoners in that trial were released on various grounds none of which affected the truth of the *case*. On the con-

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the other. The first party contended that the servants of the factory, came to take away their cows and to sow their rice lands with indigo by force; the second that they were merely engaged in sowing lands with indigo to which they had a right, and that the talookdars and villagers of Umedpore came up to them in a body, and declaring that they had obtained legal possession or words to that effect, of some lands adjudged to Mr. Savi, by the order of the Joint-Magistrate, attacked that gentleman's servants, and wounded two of them and carried away a third, named Jamiruddeen, of whom no trace has since been found, and who is supposed to have died of his wounds. Both parties complained in support of their respective versions, Rohum Ali, defendant No. 55, who was undoubtedly wounded in the arm, mentioned the fact to the jemadar, of the Police who was stationed there, and he declared that a man named Jamiruddee belonging to his party had been taken away. This was on the 9th of Boishak, the day of the occurrence. At night on the same date, Taribulla went to the Jemadar in support of Mr. Savi's version, and mentioned that three men had been wounded, one of whom was taken away, and he also mentioned five of the present defendants by name adding, that he had four witnesses to the occurrence, Nos. 4, 9, 13 and 14, Lall Mahomed, defendant No. 58, also complained to somewhat the same effect.

This being the case, the Joint-Magistrate went to the spot to investigate the occurrence, and I have no doubt that what he says as to the Umedpore villagers being the aggressive, as they were the larger party is substantially correct. It is established in evidence that two of the factory servants were wounded, and that a Khalasee, recently employed, named Jamiruddee, was carried away apparently dead or dying, in the direction of Umedpore. The progress of the men with the body is tracked through several villages and over several plains by the witnesses Nos. 18 to 40, till it was finally lost sight of. But none of these witnesses depose to the recognition of any of the defendants in Court, and though I am of opinion that the fact of an affray attended with the wounding or the death of a man named Jamiruddee of Satrejetpore did really take place, I am also of opinion that participation in the affray is not brought home either satisfactorily or legally to any one of the defendants, and in this view of the case, I have only to record my reasons for acquitting them all of the charge. The Jury acquitted all the defendants.

No. 55, Rohum Ali, was wounded in the arm, and gave information to the jemadar. Witnesses Nos. 1 and 2, themselves wounded do not mention him as having struck the deceased, and indeed witness No. 2 does not recognize him at all. The witnesses Nos. 5, 7, 8, 9, 10, 11, 12, 13 and 14, declare that this defendant struck or pierced the man, Jamiruddee, but some of them were hardly in a position to see distinctly what was going on. Witness No. 5, moreover pointed him out as No. 62, and witness No. 12, did exactly the same. This being the case, I consider the first count entirely to fail against this man. He is not mentioned either in the first report of Taribulla, nor were the majority of the witnesses against him brought forward *at first*. As to his being present on the spot and to his having been wounded there is of course his own admission on oath before the Joint-Magistrate, but this obviously so far from strengthening the case against him, cannot even be considered as evidence at all, and therefore with the omission to mention him originally, the inability of the two principal witnesses to recognize him, the evidence of the other witnesses which either failed to identify him or was biassed and unsatisfacto-

to the affray with *murder* of Jamiruddee, as it was not proved, that Jamiruddee had met with his *death*, also, that in order to convict the prisoners of being accessaries after the fact to the affray with *wounding* of Jameeruddee, there must be evidence to show, not only that they knew that the affray with wounding had taken place, but that they did something to *assist personally* the principals who committed it, whereas there was not only no distinct evidence on the record of the *death* of Jamiruddee, but it was not clearly proved that it was *Jamiruddee*, whom they were charged with carrying away *dead or alive*, but, admitting that i was Jamiruddee, the mere

1858. trary, I then recorded my opinion that "the fact of an affray

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fact of their carrying him away *in this state* cannot be held to be proof of the prisoners' being guilty, in the legal acceptation of the term, as accessaries after the fact to the crime charged.

ry and the impossibility of turning his own evidence to his prejudice he is fully entitled to an acquittal.

Nos. 56 and 57, Petamber and Setul Manjees, are only mentioned by one or other of witnesses Nos. 9, 10, 11 and 13, whose manner was not at all convincing or satisfactory, and what is most to the point is, that their names were never mentioned as defendants at all until they had appeared as witnesses before the Joint-Magistrate, I acquit them both.

No. 58, Lall Mahomed, is the man said to have struck the witness, Anaruddee, No. 1. But this witness who should surely be able to say who struck him as he managed to limp away from the place, says it was Mahesh bearer, not present, and against this remarkable omission I cannot put the evidence of such witnesses as Nos 3, 4, 7, 8, 9, 10, 12, 14 and 15, the last of whom called the defendant, *Allum*. Moreover Lall Mahomed like Rohum had been allowed to give evidence before the Joint-Magistrate. I acquit him.

No. 59, Kooran Sirdar, was not mentioned by Taribulla and he complained that another man named Jamiruddee, his brother-in-law, had been taken away, which would be quite sufficient reason for implicating him, and the testimony of witnesses Nos. 7, 9, 10, 11 and 13, the latter of whom never mentioned him before the Joint-Magistrate is not satisfactory. I acquit him of the charge.

No. 60, Kaloo, was mentioned by Taribulla at first and he is recognized as present by No. 2, who however called him Godai and by No. 3 and by No. 7, which latter however called him *Allum*, and by No. 9, 10, 11, and 15. I do not consider the evidence against him to be satisfactory and direct his acquittal.

No. 61, Sobhanoolla, is recognized by witnesses Nos. 3, 7, 8, 9, 10, 11 and 13, and was mentioned by Taribulla. But considering the case generally, and the doubt as to the sincerity and impartiality of the numerous witnesses against him, I give him the benefit of the doubts that surround the case, and which have rendered the conviction of the others impossible and I direct his acquittal.

No. 62, Kasimally, is recognized by the witness No. 1, who was in a position to see what was going on and by witnesses Nos. 7 and 8. His defence is an *alibi* to the effect that previous to the affray he had set out on a tour of instruction to his disciples, he being a Mussulman teacher of religion, and this defence being more satisfactory than these pleas usually are together with the impossibility of fully trusting the witnesses Nos. 7 and 8, who depose to his presence entitle him to an acquittal.

No. 63, Godai besides being only mentioned by a few witnesses, rests his defence on an *alibi* at Calcutta, and elsewhere, whither he had gone with three other witnesses, boatmen, to take indigo seed or to buy rice, and I am bound to say, that the evidence to his absence on this trip from the close of *Choitro* to the commencement of *Joyshto* is as clear trustworthy and reliable as any evidence in this country could be. He is fully entitled to his acquittal.

The Joint-Magistrate would have acted more judiciously had he investigated the matter at first without committing himself to taking evidence on either side, and Rohum and Lall Mahomed should have been made plaintiff and witness, on the other side as was the original intention of the Joint-Magistrate. The committal of the two Manjees was clearly an error of judgment.

I see no reason however to think that the whole case is false or got up. The right men have not been identified and that is all.

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attended with the death of a man, named Jamiruddee of Satrejetpore, did really take place." The question now is whether all or any of the three charges are proved against the two prisoners. Of the witnesses Nos. 1 to 10, nearly all depose to the presence of the two prisoners in the affray, and one man No. 6, does say distinctly that Niamut wounded the missing man, Jamiruddee, and that Haran wounded witness No. 2. On the 3rd count, that of carrying away or assisting in carrying away the man, Jamiruddee, dead or dying, there is good evidence as to the guilt of both prisoners in the depositions of witnesses Nos. 11, 13, 15, 16, 18 and 19. These men were in positions to recognize the two prisoners as well as two other men not present. They mentioned the names of the prisoners before the Joint-Magistrate, who conducted the local investigation himself. One man No. 15, must not be confounded with a witness of the same name, the son of Jamiruddee whose evidence would not be satisfactory, as this latter never mentioned the names at first and several of the witnesses cultivate indigo, not for Mr. Savi, whose servant, Jamiruddee, is missing, but for the factory of Hatberia, belonging to the opposite party. There is nothing whatever to impeach or invalidate this latter evidence, and not a suspicion was thrown against it on the former trial. The Jury overlooking this point, though it was distinctly brought to their notice would have acquitted the prisoners on all three counts.

I acquit them of the first, and give them the benefit of any discrepancies in the evidence of the witnesses as regards the second also, though it must be noted that the points in favor of the prisoners acquitted at the last trial do not come out so strongly in favor of the two present prisoners. Indeed the reasons which induced me to acquit the last set do not apply, many of them, to the present two. But on the third issue, the chain of evidence is connected, clear and complete. The defence moreover is utterly untrustworthy, whereas the evidence of some of the former prisoners was a good defence. The prisoner, Niamut, has brought his brother-in-law and others to prove that he was with him at the time, and other witnesses to prove his absence at the same time from his own home. That he went to see his brother-in-law on the hue and cry after the affray, I have little doubt, for the witnesses who spoke doggedly to one particular date and knew nothing else, had evidently been carefully instructed to do so, and the evidence for Haran merely proves that he was unwell and in a feeble condition up to Falgoon, but was cured in Choitro. The affray took place in *Baisakh*. The prisoner, Haran, is a notorious *lattial*, and the prisoner Niamut, is something not much different. I recommend that both the prisoners be imprisoned for seven years with hard labor.

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Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) After carefully weighing the evidence in this case, it is not in my opinion sufficient to convict the prisoners on the 3rd count, of which they have been found guilty by the Sessions Judge viz. *of being accessaries* after the fact.* The Ses-

* *From the officiating Sessions Judge of Jessore to the register of Nizamut Adawlut No.* 31 *dated 25th May,* 1858.

I have the honor to address the Court regarding the case of Niamut Khalasi and another convicted by this Court, but acquitted by the Nizamut on the 28th of April last, the orders on which were communicated in your letter of the 28th ultimo.

2. In his remarks, the presiding judge observed that the Sessions Judge, convicting the prisoners of "being accessaries after the fact," did not say *what fact*, the prisoners were accessaries to, and it was further remarked by the presiding judge that it was not yet proved that Jumeerudin (the man said to have been murdered) had met with his death, and that, until this was proved, the prisoners could not be convicted of being accessaries after the fact to the affray with murder.

3. I beg respectfully to submit to the Court that I did not record a distinct finding to the effect that the fact of the affray with murd r *was proved.* On the 9th of S ptember last, when acquitting certain prisoners, I expressly wrote that "the fact of an affray attended with the wounding or the death of a man named *Jumeerudin of Satrijitpore* did really take place" that he was, "a Khalasi recently employed" and that he was carried dead "or dying in the direction of Umedpore."

4. On the last occasion, January 5th, when convicting the two prisoners acquitted by the Nizamut, I again referred to my previously recorded opinion, quoting the words, and I proceeded to find the two prisoners guilty as accessaries after a fact which I had held as proved. I submit therefore, that as far as my judgment was concerned I had judicially found a fact established, and was, so far, judicially and logically correct in finding the two prisoners to be accessaries after that fact

6. On the finding of the presiding judge as to the actual evidence it is, of course, not my desire to comment, but I think, that any subordinate Court is fully justified in representing correctly its own proceedings and findings whenever it has reason to believe that such have been overlooked or misapprehended by the superior Court.

And it is with this view solely that I venture to trouble the Court on the subject.

Resolution of the presidency Court of Nizamut Adawlut (Present: D. I. Money, Esq.) dated the 7th June, 1858.

"The Sessions Judge has submitted an explanation, which was not called for, but which, after being attentively considered, has failed to satisfy the Court, that the fact of the affray with the murder of Jumeerudin was ever distinctly found, on the contrary the very words used by the Sessions Judge when acquitting the other prisoners and to which he now refers, throw a doubt upon the finding the fact of an affray attended with the *wounding or the death* of a man named Jumeerudin." The finding and the charges appeared to the Court to be vague. If, however, notwithstanding the expressions used, the Sessions Judge did really intend distinctly to record a finding of affray *with the murder of Jumeerudin,* such finding will not affect the grounds on which the Court acquitted the prisoners, as in the opinion of the Court there was no satisfactory evidence on the record of the *death* of Jumeerudin.

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sions Judge does not say *what fact*, whether, as per 1st count, of affray with *murder* of Jamiruddee, or affray with *wounding* of Jamiruddee as per part of the 2nd count.

The Court presume that the Sessions Judge does not find the prisoners guilty of being accessary after the fact to the affray with *murder* of Jamiruddee, as it is not yet proved that Jamiruddee has met with his *death*, and until this be proved, they cannot be convicted of being accessaries after the fact to the affray with murder.

If the fact is affray with *wounding* of Jamiruddee, in order to convict the prisoners of being accessaries after the fact, there must be evidence to show, not only that they knew that the affray with wounding had taken place, but that they did something to *assist* the principals who had committed it. The *assistance* must be *personal.*

There is not only no distinct evidence on the record of the death of Jamiruddee, but it is not clearly proved, that it was Jamiruddee whom the prisoners are charged with carrying away dead or alive. The evidence as to the recognition is doubtful. Of the witnesses Nos. 11, 13, 15, 16, 18 and 19, upon whose evidence in substantiation of the 3rd count the Sessions Judge mainly relies, only witness No. 11 could depose to the fact. The other witnesses spoke from hearsay. Even if it be admitted, that it was Jamiruddee, who was carried away *dead or alive* by the prisoners, I do not perceive upon what grounds the mere fact of their carrying him away *in this state* can be held to be proof of their being guilty, in the legal acceptation of the term, as accessaries after the fact to the crime charged I therefore acquit them, and direct their immediate release.

SUMMARY CASES.

APRIL,

1858.

SUMMARY CASES.

APRIL 1858.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT
versus
PURKASHCHUNDER DOSS.

Sylhet.

1858.

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Case of PURKASHCHUNDER DOSS.

This case was referred to the Nizamut Adawlut under Section 5, Act XXXI. 1841, and Circular Order No. 106, dated 18th March 1842, by Mr. M. Shawe, Sessions Judge of Sylhet on the 31st March, 1858, with the following report.

The order of the Principal Sudder Ameen reversed, as the offence, which he punished, was clearly not contempt in open Court, such as was contemplated, by, and is punishable under the provisions of Act XXX. of 1841. Held that contempt of Court, for the punishment of which that law was enacted, consisted in menacing gestures or expressions or any kind of insulting or disrespectful or defiant conduct obstructive of justice in the presence of the presiding officer. The Court in their Circular Order No. 128, dated the 3rd February, 1843, ruled that wilful and designed prevarication in a witness not appearing to be correctly classable under the "obstructions to justice" rendered punishable by the above Act, could not be punished as a contempt of Court.

The Principal Sudder Ameen exercising the full powers of a Magistrate, sentenced the appellant to pay a fine of Rupees 20, or in default to be imprisoned for fifteen days, on the ground that the appellant having appeared before him as a witness in a case of affray, and certain questions being put to him, which he (the appellant) did not clearly answer, and thus in the Principal Sudder Ameen's opinion causing obstruction to justice and being guilty of contempt of Court.

I am doubtful as to the correctness of the Principal Sudder Ameen's proceedings; 1st, as to whether the extent of punishment above mentioned admits of an appeal to the Sessions Judge, there being nothing clearly expressed in Act XXX of 1841, in regard thereto; 2nd, whether it was or was not requisite to put the defendant on his defence and take his reply previous to passing sentence on him; 3rd, whether the defendant on the grounds stated by the Principal Sudder Ameen, caused any obstruction of justice or was guilty of contempt of Court.

I presume the appellant's reply should have been taken by the Principal Sudder Ameen before he (the appellant) was sentenced, the reasons given by the Principal Sudder Ameen do not show that the defendant was guilty of contempt of Court, the sentence passed on him should be reversed. I do not consider that a witness is guilty of contempt of Court for not at once giving a clear answer to a question put to him as he might not at first have quite understood it.

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I called for an explanation from the Principal Sudder Ameen regarding his proceedings *vide* my *roobakaree* of the 5th ultimo, in reply to which the Principal Sudder Ameen states that it is not the practice to take any reply from a person punished on such a charge, i. e. contempt of Court, &c., and that he was justified in convicting the appellant under Act XXX. of 1841.

I am doubtful as to whether I can interfere in this case, but I think the conviction should be quashed, I therefore recommend that the Principal Sudder Ameen's order be reversed and the fine paid by the appellant be returned to him.

There are several cases of a similar nature, which I called for, for inspection, on perusal of statement No. 9, I therefore forward the proceedings in the case for the Court's consideration and orders.

Resolution of the Nizamut Adawlut.—(Present: Mr. D. I. Money.) No. 247, dated 19th April, 1858.

The Court observe that the Sessions Judge did right in making this reference to the Nizamut Adawlut.

The offence which was punished by the Principal Sudder Ameen is clearly not contempt in open Court, such as was contemplated by, and is punishable under, the provisions of Act XXX. of 1841.

Contempt of Court, for the punishment of which that law was enacted, consists in menacing gestures or expressions or any kind of insulting or disrespectful or defiant conduct obstructive of justice in the presence of the presiding officer.

The Court in their Circular Order No. 128, dated the 3rd February, 1843, ruled that wilful and designed prevarication in a witness not appearing to be correctly classable under the "obstructions to justice," rendered punishable by the above Act, could not be punished as a contempt of Court.

To interpret and punish a confused or inexplicit answer on the part of a witness, as a contempt of Court, would, in many cases, be as obstructive of justice as any conduct for the punishment of which Act XXX. of 1841 was enacted.

The order of the Principal Sudder Ameen is reversed.

PRESENT :

D. I. MONEY, ESQ., *Officiating Judge.*

No. 27 OF 1858.

GUNGACHURN SHOBA AND OTHERS (APPELLANTS)
VAKEEL OF APPELLANTS, BABOO UNNOOCOOLCHUNDER MOOKERJEA.

Hooghly.

1858.

April 19.

Appeal from the order of the Sessions Judge of Hooghly, confirming the decision of the Cazee, whereby on conviction of an assault, the petitioners were sentenced by that officer to one month's imprisonment each and 15 Rs. fine in lieu of labor, was dismissed on the ground that the Cazee having been invested with special powers had full authority under the provisions of Section 2, Clause 3. Regulation III. of 1821, to pass such sentence if the penalties authorized in Regulation X. of 1807 appeared to him to be insufficient.

This is an appeal from the order of the Sessions Judge of Hooghly, confirming the decision of the Cazee, whereby on conviction of an assault, the petitioners were sentenced by that officer to one month's imprisonment each and 15 Rs. fine in lieu of labor. It is urged in behalf of the petitioners by their pleader that the punishment, defined by the law in Section 19, Regulation X. of 1807, for such an offence, is only fifteen days' imprisonment and a fine of 50 Rs., and that the sentence passed by the Cazee was beyond his competency, and therefore illegal.

If the Cazee had simply the powers of an assistant, it might have been a question for the Court to consider, whether under the provisions of the law quoted he could pass sentence of imprisonment for one month, although that law authorises in addition a fine of 50 Rs. commutable, if not paid, to further imprisonment for fifteen days, and so allowing an entire term of imprisonment for one month, if the fine be not paid.

But inasmuch as the Cazee has been invested with special powers, he has full authority under the provisions of Section 2, Clause 3, Regulation III. of 1821, to pass a sentence of imprisonment for such an offence not exceeding six months, if the penalties authorised in the Regulation above cited appear to him to be insufficient.

His sentence consequently was strictly legal, and there is no ground whatever for the appeal, which is dismissed.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

No. 20 OF 1858.

KALEEPERSAD ROY, APPELLANT.

VAKEELS OF APPELLANT MR. R. T. ALLAN, AND BABOO KISHENSUKHA MOOKERJEA.

Backergunge.

1858.

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Case of KALEEPERSAD ROY.

Appeal from the decision of the Sessions Judge, confirming an order of the Magistrate, whereby the petitioner was required to enter into penal recognizances to the amount of 16,000 Rs. and give additional security of two sureties of 8000 Rs. each to keep the peace for one year, and in default was committed to the civil jail, was rejected on the following grounds.

The Court held that, although the recognizances appeared to be unusually heavy, the lower Courts having considered it *absolutely necessary* to bind down the petitioner in heavy recognizances and security to keep the peace, they would not interfere with the order, inasmuch as the local authorities must be the best Judges of the exigency of such a measure for the preservation of the peace, and the ability of the petitioner to pay the amount; moreover, that it was not necessary, as contended for by the Petitioner's Pleader, that the party bound should be *convicted* of some *act* that would justify resort to such a measure; that, in taking penal recognizances under Act V. of 1848, consideration only is to be had to the *condition in life* of the party, and the *circumstances* of the case; that he need not be, as expressly stated in the provisions of the Act, convicted of any specific offence; and that the Act is necessarily arbitrary, it being left entirely to the discretion of the Magistrate to take recognizances from any party, and to fix the amount, whenever it shall appear to him *just* and *necessary* for the maintenance of the peace in his district.

The Court, while declining to interfere with the order of the Magistrate, left it to him to reduce the amount of recognizance, if the petitioner could prove to his satisfaction, that it was beyond what he was able to pay, and the circumstances of the case admitted of the reduction, being of opinion, that in all such cases the amount fixed should be a reasonable amount, such as, when the party has been bound over, may be easily realised, should the recognizance be forfeited.

The petitioner was required by the Magistrate to enter into penal recognizances, and to give additional security, to keep the peace for one year, and in default was committed to the civil jail.

An appeal was preferred to the Sessions Judge, who confirmed the order of the lower Court.

The petitioner now appeals to this Court from the decision of the Sessions Judge and the following are the recorded grounds upon which the appeal is preferred.

1st. "The decision of the Magistrate is illegal, inasmuch as he has decided the case without taking the evidence in support of my defence.

2nd. It is very improper on the part of the Sessions Judge to pass an order to the effect of my furnishing a security in the sum of Rs. 8000 for maintaining peace and for entering into a penal recognizance to the amount of Co.'s Rs. 16,000.

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3rd. From the jemadar's report it appears that the riotous men assembled on the part of the zemindar Burdakunt Roy, so I cannot be blamed.

4th. It is evident from the Moonsiff's *roobokaree* that he and his amlah saw the assemblage. So the lower Court should have taken the Moonsiff's *kyfeat* for ascertaining whether the assemblage was on my part or on that of Burdakunt.

Mr. Allan in behalf of the petitioner urges, that the amount of the recognizance is arbitrary and excessive, and that, inasmuch as the petitioner cannot pay it, the Magistrate's order consigns him to imprisonment for an *indefinite* time, and 2ndly that the petitioner offered to give evidence in his own defence to show, that he had committed no act justifying recourse to such a measure, which was refused by the Magistrate, and that consequently he has not had a fair trial.

The amount of the recognizance required from the petitioner was 16,000 Rs., the amount of the additional security from the two sureties 8000 Rs. each.

It appears from the proceedings that the opposite party, Burdakunt Roy Chowdry, has been bound down to keep the peace in penal recognizances to the *same* amount as that demanded from the petitioner.

When the petitioner appealed from the order of the Magistrate to the Sessions Judge, his appeal was rejected by the Sessions Judge upon the following grounds, which he has recorded.

"On a consideration of the papers submitted by the Magistrate, I am of opinion that to *secure* a *continuance* of peace in that portion of the district within which the estates of the appellant lie and his influence extends, it is *absolutely necessary* to bind down the appellant in *heavy* security and recognizances to keep the peace."

Under Section 2, Act XXXI of 1841, there was permitted to the petitioner but *one* appeal from this order of the Magistrate to the Sessions Judge, and that appeal was *final*. The only *exception* which the law makes is in giving authority to this Court to call for the records of any criminal trials of any subordinate Court, and to pass upon them such orders as may seem fit, but, agreeably to the provisions of Section 5 of the Act, the Court would only call for such records for the purpose of satisfying itself as to the *regularity* of the proceedings of the subordinate Court, and would only *alter* any sentence it may have passed, when those proceedings were found to be illegal or irregular.

In this case, although the recognizances appear to be unusually heavy, I should be loth to interfere with the order of the Magistrate, which was confirmed in appeal, as I think the local authorities must be the best judges of the exigency of such a

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measure for the preservation of the peace, and the ability of the petitioner to pay the amount.

It is not necessary, as Mr. Allan has argued, that the party bound should be *convicted* of some *act*, that would justify resort to such a measure.

Under that most wholesome law Act V. of 1848, which instantaneously and vigorously enforced would in a great measure check the gross agragrian outrages, that are a scandal in Bengal, in taking penal recognizances, consideration only is to be had to the *condition in life* of the party, and the *circumstances* of the case. He need not be, it is expressly stated, convicted of any specific offence.

The law is necessarily arbitrary. It is left entirely to the discretion of the Magistrate to take recognizances from any party, and to fix the amount, whenever it shall appear to him *just* and *necessary* for the maintenance of the peace in his district.

In this case the period for which the petitioner has been bound to keep the peace is *one year*. There is no ground therefore for the apprehension entertained by his counsel of continuous imprisonment.

While therefore I decline for the reasons above stated to interfere with the order of the lower Court, I would, with reference to the unusual amount of the recognizance, leave it to the Magistrate to reduce that amount, if the petitioner can prove to his satisfaction, that it is beyond what he is able to pay, and the circumstances of the case admit of the reduction.

In all such cases the amount fixed should be a reasonable amount, such as, when the party has been bound over, may be easily realized, should the recognizance be forfeited.

PRESENT:

D. I. MONEY, Esq., *Judge*.

CASE No. 22 OF 1858.

SHEIKH RUHUMUTOOLLAH, PETITIONER

VAKEEL OF PETITIONER, MR. R. NORRIS.

East Burdwan.

1858.

April 13.

Appeal rejected, the tenor of the prisoner's defence and the evidence on the record justifying the conviction of the prisoner on the count charged. Held that as it was admitted that the stolen property was found in the prisoner's possession, the law *presumed* guilty knowledge on his part, and it was for him to rebut the presumption, which he had not done.

The pleas recorded in this case do not form sufficient ground for interference with the orders of the lower Courts.

Mr. Norris has urged in behalf of the prisoner, 1st, that the evidence is legally insufficient, and 2ndly, that until Haradhun from whom the prisoner bought the cloth is examined, the prisoner cannot be convicted of having possession of the property with a *guilty* knowledge.

The prisoner has had the advantage of an appeal to the Sessions Judge, whose decision under the law is final. This Court would only interfere upon the prisoner's pleader showing any thing irregular in the proceedings of the lower Court.

It would have been more satisfactory, if Haradhun could have been examined, but he has absconded.

It is admitted that the stolen property was found in the possession of the prisoner. This being so, the law presumes guilty knowledge on his part, and it is for him to rebut the presumption. He has not done so. On the contrary the tenor of his defence, and the evidence on the record, are such as to justify the conviction of the prisoner on the count charged. Under these circumstances, I reject the appeal.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT

versus

NORO PAIK.

Assam.

1858.

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Case of NORO PAIK.

The proceedings of the lower Court quashed, the Court holding in concurrence with the opinion expressed by the Nizamut Adawlut in the case of Dhora and others, 9th December, 1835, Select Report, Volume V. page 17, that it was not sufficient to proceed upon the record of the *former* trial, being satisfied simply with the identification of the prisoner by some of the witnesses, who had been previously examined; that the evidence to the facts of the case should have been taken *de novo* in the presence

CRIME CHARGED.—Affray with murder of Kanoo and wounding of Jumiroodeen and Jugo at Takimori on the 27th of January, 1857.

Committing Officer.—Captain W. Agnew, Magistrate of Gowalparah.

Tried before Major J. Butler, Deputy Commissioner of Assam, on the 6th November, 1857.

Remarks by the Deputy Commissioner.—The Jury and Magistrate* find the prisoner guilty in taking an active part in the affray, in which I concur.

In case No. 37 tried this day, the prisoner is proved by ten witnesses to have been present at the affray and to have taken an active part therein. Four witnesses in this trial identify the prisoner to have been the person as above stated, who took an active part in the affray in using a spear and *lattee* and wounding Jumiroodeen and Jugo. I therefore sentence him to seven years' imprisonment with labor in irons.

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* *Remarks by the Magistrate of Goalparah.*—The prisoner's complicity in the affray in which he took a most prominent part is fully proved by the witnesses for the prosecution, who named him throughout as one of the chief actors in the outrage. He denies the charge, alleging that he was not in the service of the Bohorbund zemindar at the time the occurrence took place, and that he first heard of it when at the house of his relative Neerchand at Komlajhor, to prove which he cited Neerchand, Gooh, Partuma, Kaltoo, Gora and Shanti, all of whom, with the exception of the two last, who were not forthcoming, were examined, but far from supporting the prisoner's defence, stated he himself gave them the first intimation they got of the affair, and that he told them he had left Madoorgunge cutchery for fear he should get into a scrape on account of the business, and they further allege that the prisoner was in Bohorbund zemindar's service when the outrage was committed; before the Jury the prisoner declined to examine these witnesses, who he urged must have been tampered with, citing some others to prove that he was in the Tariah zemindar's service at the time alluded to, I did not consider it necessary to delay the trial for these witnesses, because, even allowing that they had made good the point taken up in defence, the conclusion the prisoner wished to be drawn therefrom would not have followed, for he might very well have been in service at Tariah, and still have taken part on the side of his old mistress in her attack on her neighbour and hereditary enemy, the Burwah.

The Jury find the prisoner guilty, and fully concurring with them in their verdict, I beg to recommend that he be sentenced to seven years' imprisonment with labor and irons in the zillah jail.

Resolution of the Nizamut Adawlut.—(Present: Mr. D. I. Money.) No. 251, dated the 21st April, 1858.

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Case of NORO PAIK.

The appeal of the prisoner has been conducted by his pleader, Baboo Sreenath Doss. He has taken up two grounds of objection to the trial and sentence of the lower Court, 1st, that the Deputy Commissioner depended on evidence recorded on a former trial, in which another prisoner had been convicted, and that only four of the witnesses, who had deposed on that trial, were examined as to the identification of the prisoner before the Court, and 2ndly, that certain witnesses named by the prisoner were not examined in his defence.

It has been urged by the prisoner's pleader that on both these grounds the prisoner has not had a fair trial and that the proceedings of the lower Court should be quashed, and he cites as a precedent the decision of this Court of the 9th December, 1835, in the case of Dhora and others, Select Reports, Volume V. page 17.

On examining the evidence for the prosecution it appears to the Court to be clearly open to the objection urged. The mere fact of identification is not sufficient. The Court concur in the opinion expressed by the Nizamut Adawlut in the case above cited, and think that the evidence to the facts of the case should have been taken down *de novo* in the presence of the prisoner, and that it is not sufficient to proceed upon the record of the former trial, being satisfied simply with the identification of the prisoner by some of the witnesses who had been previously examined.

If the Deputy Commissioner did not think it necessary to take the evidence *de novo* of all the witnesses, who had been previously examined as to the facts of the case, the witnesses who were called should have been questioned regarding the evidence they had formerly given. It should have been read to them in the presence of the prisoner, who should have had an opportunity of cross-examining them upon it.

The witnesses named by the prisoner in his defence should also have been summoned and examined. The omission to take their evidence made it almost an *ex parte* case for the prosecution.

In the former trial, moreover, it was stated by some of the witnesses for the defence, that Noro Pyke was dead. Were there two individuals of the same name? This point also should have been cleared up.

Under these circumstances the proceedings of the lower Court are quashed, and they will be directed to proceed to the trial of the prisoner *de novo*; taking such evidence for the prosecution and for the defence, as they may, with reference to the above remarks, consider necessary, and the ends of justice may require.

of the prisoner; further that if the Deputy Commissioner did not think it necessary to take the evidence *de novo* of all the witnesses, who had been previously examined as to the facts of the case, the witnesses who were called should have been questioned regarding the evidence they had formerly given, and it should have been read to them in the presence of the prisoner, who should have had an opportunity of cross-examining them upon it; and lastly that the witnesses named by the prisoner in his defence should have been summoned and examined.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

No. 26 OF 1858.

MOHEEMCHUNDER CHUCKERBUTTEE, PETITIONER, VAKEELS OF PETITIONER, BABOOS ASHOOTOSH CHATTERJEA, BANEEMADHUB BANERJEA, AND SREENATH SEIN.

East Burdwan.

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Held that, as there was nothing on the record to show that the Magistrate had obtained the sanction of the Court, to which he was immediately subordinate, under the provisions of Act XXXII. of 1852, and that as he was not competent under those provisions to act as Judge in the prosecution he had instituted, his proceedings were illegal. The orders, therefore, of the lower Courts were reversed and the Sessions Judge was directed to instruct the Magistrate to proceed according to law. The attention of the Magistrate was at the

The petitioner was sentenced by the Magistrate to six months' imprisonment and to pay a fine of 100 Rs. or in default to labor, on being found guilty of extorting money from Eshenchunder Bose on the pretence that he had procured his acquittal.

The particulars of the case will be gathered from the following decision given by the Magistrate, and the order of the Sessions Judge, confirming it in appeal.

Decision of Mr. Lawford, Magistrate of E. Burdwan.

"A short time ago I received an anonymous letter stating that a mohurrir in my Court, named Moheem, was in the habit of taking money from people attending my Court, on the pretence that he could get their cases favorably decided for them.

"It was not the first time I had heard of it and as some instances were given, in which he had taken money I determined on enquiry into the matter.

"I accordingly directed my serishtadar to ascertain from Eshen Bose, who it was stated had paid money to Moheem, whether he had really given him any money.

"Eshen Bose informed the serishtadar that he had paid Rs. 24 to Moheem and that he was quite willing to tell me.

"My serishtadar likewise informed me that Eshen had told him that my nazir's palki bearers were present at the time the money was given.

"On hearing this I directed my serishtadar to bring Eshen and the palki bearers to me.

"Eshen made his appearance in my cutcherry last Tuesday (2nd March,) week but owing to press of business on that day I was unable to examine him.

"The next day I sent for him when I found he had gone home. I accordingly directed my serishtadar to send for him again which he did, he did not come, however, this time and he did not appear until Saturday after the Darogah had sent for him.

"The serishtadar allowed him to go and get his food, but on my arrival in cutcherry he was no where to be found and I did not get hold of him till the evening.

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"During this interval Moheem or his friends had persuaded him to deny having given the money and when brought before me he stated that he had never paid any money to Moheem.

"I therefore took his defence instead of making him a witness in the case as I had originally intended.

"I consider the charge of extorting money from Eshen Bose fully proved against Moheem.

"The palki bearers whose evidence I see no reason to distrust, say that on the evening I acquitted Eshen Bose of the charge brought against him by Mr. Lodge, Moheem left my cutcherry while I was writing out my decision and told Eshen that he had gained his case for him and that he must pay him some money, on which Eshen took some money from his side and paid it to Moheem, the fact of his receiving the money is further proved by the evidence of the serishtadar who deposes that Eshen when asked voluntarily told him that he had paid Moheem the money.

"Moheem, in his defence, attempts to make out that the serishtadar has quarrelled with him and that he has got up this case against him, he has failed to prove the existence of a quarrel, and the serishtadar could therefore have had no possible motive for bringing such a charge and it is to the last degree incredible that a man of his education and position would have come forward and perjured himself to get a person in Moheem's position punished.

same time called to Con. No.757 whereby Courts of justice are prohibited from calling upon a person to give evidence on oath touching a bribe alleged to have been administered by himself, as the delivery of a bribe is a criminal act, and renders the person delivering it subject to a criminal prosecution as well as the receiver.

"The evidence of the palki bearers and the serishtadar is of course equally strong against Eshen. Eshen brings evidence to prove that the serishtadar sent to him at his house to come into Burdwan and that he told him some post at the library was vacant, but it is not very apparent what he wishes to prove by this.

"The taking of the money by amlah in mofussil Courts is an abuse so universally practised, and so seldom brought to light, that I am determined to punish severely any person in my Court whom I can detect offending in this way, for not only are the poor robbed and thereby deterred from seeking redress in our Courts, but the Courts themselves and those who preside in them are brought into disrepute.

"I find Moheem guilty of extorting money from Eshen Bose on the pretence that he had procured his acquittal, and I sentence him to six months' imprisonment and to pay a fine of one hundred Rupees within five days, and in default to labor; and I find Eshen guilty of giving a bribe to Moheem, but as I consider the party who gives not nearly so culpable as he who takes, I sentence Eshen to three months' imprisonment and to pay a fine of thirty Rupees within five days, and in default to labor.

"Moheem is dismissed from employment."

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Decision of Mr. Reed, the S. J. of E.

"Moheemchunder Chatterjea, defendant, appellant, appeals against the order of the Magistrate sentencing him to six months' imprisonment and to pay a fine of Rs. 100 or to labor during the period of imprisonment. The circumstances of this case are fully detailed in the Magistrate's judgment in it. The circumstance of the bribe having been given by the prisoner, Eshenchunder Bose (who has also been convicted) to the other prisoner Moheemchunder Chatterjea, has been proved by two witnesses who witnessed the transaction and it has further been proved by the deposition of the serishtadar of the Magistrate's Court, that the defendant Eshenchunder admitted before him that he had in reality given the bribe to Moheemchunder and that he was prepared to say so before the Magistrate, and it appears also that he really appeared in the Magistrate's Court for the purpose of deposing to that effect, but the Magistrate was unable to attend to him on that day, and that when after considerable difficulty he was again made to appear after a lapse of eight days he having in the interim disappeared from the station, he denied having given the bribe. I see no reason to interfere with the order passed by the Magistrate in this case, and therefore dismiss this appeal as well as that preferred by the prisoner Eshenchunder Bose in appeal, case No. 10."

The petitioner now comes up to this Court upon two grounds, which have been argued in his behalf by his pleader. 1st that, if the Magistrate proceeded under the provisions of Section 9 Regulation XIII. of 1793, Eshenchuner Bose who gave the bribe should have been put upon oath, and security taken from him to prosecute the charge. 2ndly, that if the Magistrate proceeded under Regulation XXXII. of 1852, he was bound by its provisions, Sections 2 and 3, to obtain the sanction of the Court to which he was immediately subordinate, and he was prohibited in such a case from acting as Judge.

The Government pleader Baboo Sumboonath Pundit opposed these pleas upon general grounds and maintained that the Magistrate had authority to act in such cases under the provisions of Act II. of 1836.

There is great weight, I think in the objections urged by the prisoner's pleader.

The proceedings of the Magistrate could not have been conducted under Regulation XIII. of 1793, inasmuch as the person from whom the money was extorted, Eshenchunder Bose, was converted at once from a witness to a defendant, when he denied all knowledge of the transaction.

The case therefore must have been tried under Act XXXII. of 1852.

The Act cited by the Government pleader does not apply. It has relation to other offences, affecting the public.

As there is nothing on the record to show that the Magistrate obtained the sanction of the Court to which he was immediately subordinate under the provisions of Act XXXII. of 1852, and as he was not competent under those provisions to act as Judge in the prosecution he had instituted, his proceedings were illegal. I therefore reverse the orders of the lower Courts, and direct the Sessions Judge to instruct the Magistrate to proceed according to law. The attention of the Magistrate will at the same time be called to Construction No. 757, whereby Courts of Justice are prohibited from calling upon a person to give evidence on oath touching a bribe alleged to have been administered by himself, as the delivering of a bribe is a criminal act, and renders the person delivering it subject to a criminal prosecution as well as the receiver.

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No. 33 of 1858.

ESHENCHUNDER BOSE, Petitioner. Vakeel of Petitioner, Baboo SREENATH SEIN.

Order of lower Court reversed with reference to this appeal by the decision passed in appeal No. 26.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

Shahabad.

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No. 3 OF 1858.

RAMKISSEN DOSS, AND OTHERS, PETITIONERS.

VAKEEL OF PETITIONER, MR. J. W. B. MONEY.

This is a petition praying the Court to place again upon the file an appeal from a sentence passed by Mr. Littledale, Officiating Sessions Judge of Shahabad, as Commissioner under Act XIV. of 1857, in a case tried by him under Act

The petitioners prayed the Court to place again upon the file an appeal from a sentence passed by Mr. Littledale, Officiating Sessions Judge of Shahabad, which had been struck off upon the Court's ascertaining that the case had been tried by that officer as *Commissioner* under Act XIV. of 1857, and to send for the record and proceedings of the case. The petition was rejected on the following grounds. The Court found that Mr. Littledale had been appointed Commissioner under Section 7, Act XIV. of 1857, and had tried and sentenced the petitioners under the provisions of Act XVI. of 1857, that his appointment as Commissioner was recorded in the Government Gazette on the 27th June, 1857, that martial law was proclaimed in Shahabad on the 30th July, 1857, and the offence, of which the petitioners had been convicted was committed on the 15th August, 1857.

It was held by the Court that, in the issuing of a commission under Clause 1, Section 3, Act XI. of 1857, it was provided, that a day should be specified in the commission, offences committed *after which* should be tried by that commission, but that there is no such provision, as contended by the petitioners' counsel, in the commission authorised to be issued under Section 7, Act XIV. of 1857.

It was held also, that the offence, of which the petitioners were found guilty, being affray with homicide, clearly came not only within the *general* category of *heinous* offences cognizable by the *ordinary* tribunals, but within the category of offences mentioned in Section 2, Act XIV. of 1857, within which are specially included "all crimes against *person* or property attended with *great personal violence.*

It was also held, that the question, whether the offence, of which the petitioners were found guilty under this Act, was a *less* offence than that of which under its provisions they could have been convicted, was not a question for the Nizamut Adawlut, to which the Commissioner's Court was not subordinate and by the law there was no appeal, to determine, and to send in any case, in which such objection may be urged, for the record, in order to see, if the Commissioner had *transgressed* his powers under the Act, would be an interference with the discretion, which the law for express purposes has expressly given him, and would open the way *indirectly* for an appeal, which the law had *directly* prohibited.

The Court further ruled, that under Section 3, Act XVI. of 1857, Mr. Littledale had the option to try the case either as Commissioner or as Sessions Judge, and that it possibly was the *intention* of the Government, as in their Circular No. 1792 of the 15th August, 1857, it was shown to be their *wish*, that all cases arising out of or connected with the disturbed state of the country should be tried by Commissioners under the Act, and all other cases in ordinary course by the Sessions Judges, but that this was not distinctly defined in the Act itself, and that these instructions had reference to districts in which martial law had not been proclaimed, as it was in Shahabad, where the ordinary functions of the Judge were suspended by its proclamation.

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XVI. of 1857, and to send for the record and proceedings of the case.

The appeal was struck off by this Court upon its ascertaining that Mr. Littledale had tried the case, *as Commissioner*, the sentence passed by him in that capacity being final, and the Court held by him under the commission not being subordinate to the Sudder.

The petitioner's counsel, Mr. Money, has urged that each of the Acts, viz. XI. XIV. and XVI. of 1857, investing the judicial authorities in the trial of certain cases with unappealable powers, depends upon certain preliminary conditions, which are not fulfilled in the case of the petitioners, and that they are therefore entitled to the right of appeal to this Court, that regarding the *commission* under which the petitioners were tried and convicted by Mr. Littledale, it is specially provided by Clause 1, Section 3, Act XI. that it shall be *issued after a date* to be specified in the commission, and, unless that date is known, it cannot be ascertained whether the offence was committed before or after that date, and consequently whether the trial was conducted by him under the powers strictly vested by the commission or in the ordinary course as Sessions Judge, that unless the record of the case is called for and examined it cannot be seen whether the petitioner's right of appeal has been taken away or not, or whether Mr. Littledale has prevented the sentence he has passed from being reviewed on appeal to this Court by alleging that he tried the case as Commissioner when he tried it or should have tried it as Sessions Judge. That the Acts referred to are highly penal Acts, and should not be extended further than the peculiar circumstances of the times and the safety of the country require, and that there is in this Court, as the highest appellate Court, a supervisory power, which can be and should be exercised in examining convictions purporting to be made under the provisions of those Acts, in order to ascertain, before an appeal be rejected, whether the convictions come within their purview and intent, and whether the Judge *at the time* actually possessed the power to try the case as a Commissioner under them, that his own *ipse dixit* cannot be accepted by the Court, and lastly that besides offences against the State the only offences that can be tried under them are "*heinous offences*" which are defined in Section 2, Act XVI. of 1857, under which Act Mr. Littledale states his sentence was passed, and that the offence of which the petitioners were guilty amounted only to a village-squabble attended with accidental homicide, and could not be included in the heinous offences defined in that Section.

Mr. Littledale the Officiating Sessions Judge of Shahabad was appointed Commissioner under Section 7, Act XIV. of 1857, and tried and sentenced the petitioners under the provi-

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sions of Act XVI. of 1857. His appointment as Commissioner under this Act was recorded in the *Government Gazette* on the 27th June, 1857, martial law was proclaimed in Shahabad on the 30th July, 1857, and the offence was committed on the 15th August, 1857.

Section 7, Act XIV. of 1857, authorized the issuing of a commission for the trial of any person charged with having committed any offence punishable by Sections 1 and 2 of Act XI. of 1857, or by Act XIV. or any other crime against the State, or murder, arson, robbery, or other *heinous crime against person or property.*

Clause 1, Section 3, Act XI. of 1857, authorized the issuing of a commission for the trial of persons charged with certain offences in any *proclaimed* district. In the issuing of such a commission, it is provided that a day shall be specified in the commission, offences committed *after which* shall be tried by that commission. There is, however, in the commission authorized to be issued under Section 7, Act XIV. of 1857, no such provision as to date, and the learned counsel's remarks directed to this part of his arguments do not apply.

The petitioners were found guilty of affray with homicide. This offence clearly comes not only within the *general* category of *heinous* offences cognizable by the *ordinary* tribunals, but within the category of offences mentioned in Section 2, Act XVI. of 1857, within which are specially included "all crimes against person or property attended with great personal violence."

The provisions of this Act are unquestionably of a highly penal nature. The jurisdiction of the commission extends to a charge of knowingly receiving property obtained by burglary and a sentence of death might be passed upon a person convicted of a very violent assault.

But whether the offence, of which the petitioners were found guilty under this Act, was *less* than the offence of which under its provisions they could have been convicted, it is not for this Court, to which the Commissioner's Court was not subordinate, and by the law there is no appeal, to determine.

This would depend upon the evidence in the case, and as there is no appeal to the Court, would be a matter for reference to the Government.

To send, in any case in which such objections may be urged, for the record, in order to see, if the Commissioner has *transgressed* his powers under the Act, would be, in my opinion, an interference with the discretion which the law for express purposes has expressly given him, and would open the way *indirectly* for an *appeal* which the law has *directly* prohibited.

It is true, as remarked by the petitioners' counsel, that Mr. Littledale had the option under Section 3, Act XVI. of 1857, to try the case either as Commissioner or as

Sessions Judge; and that it possibly was the *intention* of the Government, as in their Circular No. 1792 of the 15th August 1857 it was shown to be their *wish*, that all cases arising out of or connected with the disturbed state of the country should be tried by Commissioners under the Act, and all other cases in ordinary course by the Sessions Judges; but this is not distinctly defined in the Act itself, though the alternative was provided, and these instructions had reference to districts, in which martial law had not been proclaimed, as it was in Shahabad, to which the operation of Act XVI. had been extended. In Shahabad the ordinary functions of the Judge were suspended by the proclamation of the martial law.

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The application is rejected.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

No. 35 of 1858.

GOVERNMENT Petitioner

versus

RAMRUTTUN ROY, Opposite Party.

Vakeel of petitioner, Baboo RAMAPERSAUD ROY.

Vakeels of the opposite party, Mr. R. T. ALLAN and Baboo KISHENKISHORE GHOSE.

Jessore.

1858.

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This is an application for a review of judgment in the summary appeal of Ramruttun Roy, decided by this Court on the 31st December, 1857.

Baboo Kishenkishore Ghose in behalf of Ramruttun Roy, in whose favor the judgment had been given, objected to the review being heard upon two grounds. 1st, that there was no

On an application for a review of judgment in the summary appeal of Ramruttun Roy, decided on the 31st December, 1857, the Court overruled the plea, that the objection to the admission of the review asked for could not be heard on the part of *Ramruttun Roy*, inasmuch as he never appeared in the *original* case in the lower Court, and his appeal should never have been allowed, upon the ground that the application was for a review in a case in which Ramruttun was *one of the parties represented*, and the judgment had been given in *his favor*.

The application for a review was rejected on the ground, that the order reversed by the Court in appeal, was not, as contended for by the petitioner's pleader, a mere interlocutary order, such as is *generally* passed in the *course* of a case, and is material to its *progress*, but a sentence of a Court in a criminal trial inflicting a penalty attached by the law to an offence of which the defendant had been held to be guilty.

It was held, that in such cases, whenever a competent Court, upon what appear to it at the time to be just grounds, affords relief to a defendant from the infliction of a punishment affecting his person or his property, the *prosecutor* would not be entitled to the right of appeal against such an order, and that upon the same principle an application for a review of judgment on the part of a *prosecutor* in any case in which the Court had granted such relief would not be admitted.

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Rule or Regulation, admitting a review of judgment in a criminal trial. 2nd, that if a review could be granted, more than three months had elapsed since the decision was passed, and the application being out of time should be rejected.

Upon the first point it was urged by Baboo Kishenkishore Ghose, who was followed by Mr. Allan, that applications in behalf of *prisoners* for a review of judgment may sometimes have been *heard*, but that there was no precedent to shew that, from 1793 up to the present period any application for a review of judgment on the part of a plaintiff or prosecutor, in a case in which the defendant had been *acquitted*, had ever been granted.

The opinion of Mr. Sconce in the case* decided by Messrs. Loch and Bayley on the 4th November, 1857, was cited in support of the argument that applications for a review of judgment in criminal trials were not admissible.

Baboo Ramapersaud Roy for the Government maintained, that the objection to the admission of the review asked for could not be heard on the part of *Ramruttun Roy*, inasmuch as he never appeared in the original case, and his appeal should never have been allowed.

The Court overruled the plea upon the ground, that this was an application for a review in a case in which Ramruttun Roy was *one of the parties represented*, and the judgment had been given *in his favor*.

Baboo Ramapersaud Roy then proceeded to argue that applications for a review of judgment in a criminal trial had been granted by the Nizamut Adawlut, citing authorities, and that the principle of admitting reviews had been recognized by the resolutions passed by the Judges on the 25th July, 1851, and 28th July 1854. See page 66, rules of practice. He admitted that they were preferred by prisoners who had been convicted and sentenced, and that no application could be heard on the part of a prosecutor in any case in which a prisoner had been *acquitted*. He drew, however, a distinction between a sentence of acquittal and an interlocutory order from which a defendant, as in the case before the Court, might obtain relief *quoad* his person or his property, and urged that the opposite party had failed to show any law interdicting an appeal in such cases on the part of a prosecutor.

Upon the second point he maintained, that there was no law whatever as to time, and cited a case in which the Court received an application for a review after the lapse of three months; that, as there was no positive law, the question of time

* "Besides I very much doubt if any decision of the Nizamut Adawlut can be reviewed. There is I believe no legal authority for this course, undoubtedly a criminal conviction and sentence imposed by the Nizamut Adawlut cannot be reviewed, and by analogy, I rather think the same principle applies to all orders of the Court."

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could not arise in a criminal trial; that it was left to the discretion of the Court, in which was vested an *inherent power* in all such cases. He argued, however, that if, by analogy with civil precedure, it was necessary to file an application within three months, he could show good cause for the default; that the decision, of which a review was sought, was passed on the 31st December, 1857; that the Magistrate submitted a reference upon certain legal points, which were determined by the Court on the 6th March, 1858; that in making the reference the Government came forward in another but legitimate way before the Court; and that it was only when the determination of the legal points referred was unfavorable to the Government, they could prefer the application for review, which they did on the 13th April.

After attentively considering all the arguments that have been addressed to the Court on either side, the question which, I think, should first be determined is, whether an application on the part of the prosecutor for a review of judgment can be admitted in a case in which a defendant has obtained relief either as to his person or his property by an order of the Court. It is granted that no such application would be admissible in the case of acquittal of a prisoner. It would be contrary to law and contrary to justice. There is no appeal from a sentence of acquittal, and an application for the review of such a sentence would of course be rejected. Can the order passed by the Court in the present case be considered as coming within the same category of cases, and therefore bound by the same restrictions? I cannot admit the distinction attempted to be drawn by Baboo Ramapersaud Roy as to the nature of the order which was reversed by this Court in appeal. It was not a mere interlocutory order such as is *generally* passed in the *course* of a case, and is material to its *progress*, but a sentence of a Court in a criminal trial inflicting a penalty attached by the law to an offence of which the defendant had been held to be guilty.

In such cases, whenever a competent Court, upon what appear to it at the time to be just grounds, affords relief to a defendant from the infliction of a punishment affecting his person or his property, the prosecutor is not, I think, entitled to the right of appeal against such an order.

I am not aware of any law or precedent that authorizes such a course. Upon the same principle an application for a review of judgment on the part of a *prosecutor*, in any case in which the Court has granted such relief, would not be admitted. Under this view of the question however much personally I might have wished to hear the case re-opened and argued on its merits (the judgment, of which a review is asked, having been given *ex parte* upon the record, as produced before the Court,) the application must be rejected. It is not necessary therefore for the Court

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to determine the other points that have been argued. I need only offer two remarks,—the *first* is, that when the case came before me in appeal it was open to the Government pleader to obtain leave to appear, and take steps to defend it; the next is, that the reversal of the order of the lower Court does not prevent that Court from adopting all legal measures it may consider necessary in the prosecution of the case in which that order was reversed.

REGULAR CASES.

MAY.

1858.

REGULAR CASES.

MAY, 1851.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT AND KALACHAND HALDAR

versus

NUROTTOM DALAL (No. 1) AND RAMRUTTUN HALDAR ALIAS GENDOO HALDAR (No. 2.)

Jessore.

1858.

May 7.

Case of NUROTTOM DALAL and another.

The Sessions Judge convicted the prisoners of wilful murder and recommended them to be sentenced to suffer death. The Court acquitted them, not considering the evidence, for reasons stated in their judgment, sufficient for their conviction, and giving them the benefit of the doubt.

CRIME CHARGED.—Wilful murder of Shumbhoo Chunder Haldar by wounding him on the 3rd of January, 1858 or 20th of Poos, 1264, B. S. from the effects of which he died on the 5th of January, 1858 or 22nd Poos, 1264, B. S.

Committing Officer.—Mr. E. W. Molony, Magistrate of Jessore.

Tried before Mr. W. S. Seton-Karr, Officiating Sessions Judge of Jessore, on the 17th March, 1858.

Remarks by the Officiating Sessions Judge.—The deceased, Shumbhoo Haldar, was in the habit during the cold season of sleeping in a house which he had erected in a garden at some little distance from his own house where the rest of his family resided. He dealt in molasses and had his workshop where he slept. On the night in question he was sleeping in the verandah of the house, which was in a garden and not very near another house, when he was attacked by some person or persons and hacked about the face, head and neck in a most savage manner, from the effects of which he died almost immediately on his arrival at the station. The alarm being given on the night of the murder by two men-servants of the deceased, who were sleeping in the same verandah as their master, the chowkedar and other villagers came up, notice was immediately given to the thanah, which was not far distant: the darogah came to the spot, the deposition of the wounded man was then and there taken, and on that deposition the two prisoners were apprehended before the dawn of day.

These facts admit of no question. The deceased was between 60 and 70 years of age. The prisoner No. 2 is his nephew. The other prisoner is not related to him the deceased. The question obviously is, whether the wounds of which the man indisputably died, were inflicted by the two prisoners or by some other unknown persons. The main evidence for the prosecution consists of the depositions of the two servants

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alluded to, witnesses Nos. 1 and 2, of the deposition of the deceased taken before the darogah and again before the Assistant Magistrate; and of the testimony of the neighbours, witnesses Nos. 3 to 7. The first two witnesses depose that on the night in question they were sleeping in the same verandah as the deceased, on whose date-plantation or sugar-bakery they are severally employed during the cold season: that being awoke by the noise of some party struggling, they looked up, and distinctly saw the prisoner No. 1 hacking at the deceased, while the prisoner No. 2 was pressing him down on the breast: that the moonlight enabled them clearly to see the faces of the two assailants: that they, witnesses, ran off and alarmed the neighbourhood, and that they knew of a quarrel which the deceased had with the prisoner No. 1 about some thatching grass. These depositions tally in all essential particulars. They were given with great clearness and consistency, and that of witness No. 2, a lad of twelve or thirteen years old, and of remarkable intelligence and quickness, was closely tested by cross-examination and is well worthy of the deepest attention.

When the darogah arrived and the deceased who was at first speechless has been restored to consciousness was examined, he at once mentioned the names of the two prisoners, adding that he thought there was a *third* named Shooklaul, (brother of the prisoner No. 2 and nephew to deceased) but whom he did not recognize with the same certainty. The witnesses Nos. 3 to 7 inclusive corroborate the above story, but they saw no person and do not recognize any one. The chowkedar witness No. 3 declares that he saw two men running away at some distance whom he could not recognize. Witness No. 4 declares that the deceased mentioned four names, or the names of Shooklaul and Bholanath, both his nephews in addition to those of the prisoners. Witness No. 6 says, the same witness No. 4 admits he had some suits with the prisoner No. 1 which ended in nothing. There is no explanation of the addition of the *two* names by some of these witnesses. The two principal witnesses speak to the two prisoners and to no one else. The deceased at most only mentioned a third name and that with hesitation. But the two additional names are those of the brothers of prisoner No. 2, and there is evidently some bad feeling in the village.

A slight discrepancy in the evidence of the above witnesses as to where Jena the first witness was after the murder is not worth very much. But Jena himself declares, that he mentioned at once the names of the prisoners. The other witnesses say, they heard them *first* from the deceased. Considering a scene of confusion as must have ensued, I do not lay very much stress on these varying statements.

The reason for the murder as given by the prosecutor, who is the son of the deceased, is a quarrel about the thatching

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grass with prisoner No. 1, and about a date-garden with the nephew prisoner No. 2, and it is insinuated by the prosecutor and by the witnesses Nos. 4 and 5, that the prisoner No. 1 has an intrigue with one Pearimoni, the widow of a brother of the deceased.

When the deceased who was sent to the Sudder Station with all practicable despatch, was brought before the Assistant Magistrate, the Magistrate being out in the district, he was in the last stage preceding dissolution. He uttered the name of prisoner No. 1, with clearness before witnesses Nos. 12 and 13 who are quite unconnected with the case, and who declare that the second name uttered by him was unintelligible, but that witness No. 11, who had accompanied the deceased from the village interpreted it, or wished it to be understood as that of *Bholanath*. No reliance can be placed on this interpretation. It is at variance with the evidence of the first and principal witnesses and with the first deposition of the deceased. And the deceased who was then lying in a very weak and helpless state, died on being taken to the hospital, half an hour afterwards.

The defence set up by both prisoners is, that they had no quarrel with deceased, that they bear a high character in the village; that the deceased was a man of vicious habits and had had his ear slit for some intrigue many years ago; that Tarani Haldar, whose ryots most of the witnesses are, is at enmity with them, he having sued Nurottom, prisoner No. 1, on a bond in the moonsiff's Court, unsuccessfully, and his house having been searched in a dacoity case at the instigation of Nurottom some years ago: that their names were in reality never mentioned by the deceased in his deposition before the darogah: that the murderers are Kamal and Lalchand Haldar who intrigued with Pearimoni the widow of the brother of the deceased: that the brother of the first witness Jena owes prisoner No. 1, some money, and that the case is falsely promoted against them.

In addition the prisoner No. 1 has witnesses Nos. 14 to 21, who depose that on the night in question he was playing at games of a kind of chess till 3 in the morning at his own house. Of these witnesses Nos. 14, 15, 18, 19 and 20, declare that they sat out the night at the house of the prisoner until the chowkedar, Dhonai, came to call him saying he was wanted by the darogah when he got up and went away at once, the murder having been then committed and the search having commenced, but they the witnesses *then* being ignorant of the fact.

If the evidence of these persons could be at all relied on, or if it could be believed, that the prisoner was coolly playing as described, at the very hour when he was sent for by the police, there would be no option, but to adopt the hypothesis of the

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most perfect innocence on the one hand, or the most consummate and practised villainy on the other. But for the following reasons I mistrust the exculpatory evidence altogether. The witnesses Nos. 14, 15, 18 and 19 persist in declaring that Dhonai chowkedar on summoning the prisoner, gave no reason for the summons, and said not a word about the attack on the deceased. The witness No. 20, stating himself to be present at the same time and place, declares that Dhonai mentioned then and there, that *Shumbhoo had been cut to pieces* and that the prisoner was wanted *as he was a respectable man.* The witness No. 16 who declared before the Magistrate that he knew little or nothing amplifies his story before the Sessions, and swears that on going to his house, as he was sleepy, he heard the wife of Shumbhoo call out shortly after, that Bholanath and Kamal i. e. the nephew, and the alleged intriguer with Peary, "had settled their quarrel with her husband," and witness No. 21 declares that he went on that night to the house of Shumbhoo, when Gopal the brother of Tarani Haldar asked deceased who had struck him? and that deceased mentioned the names of prisoner No. 2 and of his two brothers Bholanath and Shooklaul, and that when Gopal asked plainly, "whether Nurottom was with them?" the deceased answered by a grunt in the affirmative. On this, the witness declares that he went away quietly, though the darogah was coming or had come, as if nothing had happened. Of all this evidence it is scarcely possible to believe one word.

Dhonai, the chowkedar when examined in the Magistrate's Court said nothing about his summoning the prisoner, said that he heard the two names of the prisoners; but heard the boy Matua (witness No. 2) say that "had Jena, (witness No. 1) been there, it would not have happened." It is clear to me, that this statement was put by the chowkedar into the mouth of the boy so as to throw doubts on the presence of Jena at the time and so to leave the story of the murder as affecting the prisoners to depend on the sole evidence of a young and unpractised witness. But Dhonai was not examined at the Sessions because he was not sent up.

No weapon was found near the houses of the prisoners on the most diligent search. The deposition of the native doctor, the civil assistant surgeon being absent on leave, proves the death to have resulted from the injuries inflicted. The woman Peari on the 8th February denied intimacy with the prisoner No. 2. The Magistrate, on going to the village could find out nothing more as to the real facts of the case, but on the 14th of January previously the same woman had admitted that she heard the deceased mention the names of the two prisoners.

The evidence for the defence, besides that commented on, consists of evidence to character and enmity with Tarani Haldar which that person denies in Court.

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The jury after a patient investigation, which lasted two days and a half, found both the prisoners guilty.

It is admitted that this case is one of some intricacy. There is an absence of adequate motive for the commission of such a barbarous crime, for the quarrel as to the thatching-grass and the gardens is hardly an adequate motive. There is thus no very apparent cause why the nephew should join another man to attack and murder his uncle. But on the other hand, it is still less apparent why the uncle should accuse two men who had not attacked him, without any reason, one of whom is his nephew, in preference to other men who had really attacked him. As to the charge of enmity with Tarani Haldar, and as to the deceased and the witnesses any or all being instigated by him, to accuse the prisoners falsely, it seems to me that there was neither motive nor opportunity sufficient for such a course. That Tarani Haldar having had a suit with one prisoner, (in which it is admitted that he failed and that he is still liable for the costs) should in the hurry and confusion of the murder, bethink himself at once of falsely implicating both prisoners; that he should have influence enough to prevail over witnesses Nos. 3 to 7 to further his views: that under this influence they, the witnesses, some of whom are charged with enmity to the prisoners should do no more than put words into the mouth of the wounded individual resisting all temptation, so natural to men thus actuated, of saying that they had recognized by the moonlight the persons of either or of both prisoners at or near the spot, that such a false charge should be with the utmost rapidity got up and really entrusted to the guidance of only two uncorroborated witnesses; one, a mere stripling, whose evidence if tutored, would be shaken under cross-examination in two successive Courts, that this tutoring should not be detected by the darogah, who did his duty by coming to the spot at once, and endeavouring by every means in his power to elicit the truth, that it should not be penetrated by the Magistrate himself on a local enquiry, that the deceased on his first consciousness after the attack having mentioned two names, should almost with his dying breath, persist in naming one prisoner, which was on the last occasion about all that he had power to do, does appear to me with every allowance for the facility with which false charges can be got up in this country, a most improbable and incredible explanation of the case. Yet on such an explanation alone can the innocence of the prisoners rest.

I place great reliance on the evidence of the two first witnesses, and on that of the boy, Matua, especially, in whose evidence tested as it was by the Court and by an able Counsel for the defence I could detect no sign of falsehood or of spite. The absence of adequate motive for the murder of the prisoners,

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the vague and unsupported insinuations against other parties as the real murderers, the slight imputations of causes of quarrel with any of the witnesses, and the hitherto respectable character of the prisoners cannot, in my opinion, outweigh the decisive testimony for the prosecution and its legitimate inferences. It is very remarkable that the darogah in his first report dated the 21st of Poos immediately after the occurrence reported with reference to the evidence of the two main witnesses that the whole village "had no sense of truth or justice," *(dhurmo rohit)* and that if the witnesses were detained in the Mofussil the case would be spoilt. This is not the language nor the course of action likely to emanate from a man getting up a false case or shifting the blame on innocent parties.

On a review then of the above evidence and of the deposition of the deceased, I have arrived at the conclusion that the deceased was really murdered in the most bloody and barbarous fashion by the two prisoners at the bar, for some motives which local enquiry has perhaps failed entirely to fathom, that their defence is quite untrustworthy, and that they, whether instigated by others or not, are the guilty parties who ought to suffer for their crime.

Had I reasonable doubts I should give them both the benefit thereof and acquit them. But having given my reasons for conviction and seeing no mitigating or palliative circumstances whatever, it only remains for me to recommend that the full penalty of the law be inflicted on both parties. I can make no distinction between the two, and the comparative youth and inexperience of the younger prisoner as well as his near relationship to the deceased only aggravates his guilt.

I have to recommend therefore that both prisoners be hung by the neck till they are dead.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The prisoners have been defended by Baboo Ashotosh Chatterjee.

The Sessions Judge admits that this case is one of "some intricacy" in consequence of the "absence of an adequate motive for the commission of such a barbarous crime." At the same time he gives good reasons for considering it most improbable that the deceased should have charged the prisoners falsely, one of them being his nephew, had they really been innocent, or that others should have been able so suddenly, from enmity to the prisoners, to instigate and procure the successful concoction of such a charge. It does seem improbable: but does the evidence for the prosecution so thoroughly support the presumption, and is it of such force as to leave no doubt of the prisoners' guilt upon the mind? Are the statements of the eye-witnesses, and the other witnesses, so clear and consistent as

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to the facts they depose to, and are their own acts in connection with the fearful tragedy, and immediately following it, such as would naturally and necessarily follow, so as to entitle those statements to the most implicit belief? A very careful examination of the evidence on the record compels me to come to a different conclusion.

The two eye-witnesses, upon whose evidence the Sessions Judge places great reliance, although they had only just witnessed the brutal deed and recognized the prisoners, never mentioned their names to those they met, when they left the spot to seek assistance.

The other witnesses including Nos. 4 and 6 came to the spot, and saw the deceased cut and hacked. They did not hear from him then, nor did the two eye-witnesses inform them, who had committed the savage assault. Witness No. 6 states that he saw the eye-witness, No. 2, sitting there, but nothing was said of the perpetrators of the deed. The witnesses, Nos. 4 and 6, go to the prosecutor, the son of the deceased, to acquaint him with what had occurred. This is at midnight. He is simply told that his father has been assaulted, but by whom he is not informed. Had the eye-witnesses communicated what they had seen, there is no doubt these witnesses would have immediately informed the son. Nothing is heard of the prisoners, until the prosecutor arrived, when the deceased on being questioned by him mentions the prisoner's names before the other witnesses. Connecting all this with the fact that one witness states that the deceased mentioned a *third* name in addition to the prisoners, and another witness states that he added a *fourth*, and that the two added names were those of the *brothers* of the prisoner No. 2, and bearing in mind the " bad feeling in the village" evident from the proceedings, and alluded to by the Sessions Judge, and the apparent attempt of the witnesses, Nos. 4 and 6, to implicate others, regarding whom the eye-witnesses, Nos. 1 and 2, were silent, and the difference in the statements of the witnesses regarding the witness, No. 1, as to where he was after the murder, a point which I do not agree with the Sessions Judge in thinking immaterial, all this of itself would throw a doubt upon the evidence for the prosecution.* But when, in addition to it, there is evidence on the other side to show, that the deceased was a man of dissolute character, and had his ear once slit for an intrigue, that there were party animosities in the village, that most of the witnesses are ryots of Tarani Haldar, an influential man, who had a suit with the prisoner, No. 1, that the prisoners have always borne a good character, and when their witnesses establish an *alibi* on their behalf upon consistent testimony, which would only be rejected, should the evidence for the prosecution not admit of a *doubt*, under all

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these circumstances, considered together with the absence of an adequate motive, I should be sorry, upon such evidence, to sentence the prisoners to capital punishment.

They are, if prisoners ever were, entitled to the benefit of the doubt.

I therefore acquit them and direct their immediate release.

PRESENT :

D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT

versus

KHEROO SIRCAR (No. 1,) SORITOOLLAH SHEIKH (No. 2,) ISHURCHUNDER SIRCAR (No. 3,) SOMIR KHAN (No. 4,) KAMALDEE SIRDAR (No. 5,) KHOSAL PAIK (No. 6,) MOHBOO GHURAMEE (No. 7,) ISHARUT MEER (No. 8,*) BHADOO SHEIKH (No. 9,) BHEEKOO SIRCAR (No. 10,) AHED SHEIKH (No. 11,*) BADOO MOOLLAH SIRDAR (No. 12,) LUKEE KAUNTH DUTT (No. 13,) TOOFANEE PURAMANICK (No. 14,) ROMANATH SIRCAR (No. 15,) KANCHEE SHEIKH KAREEGUR (No. 16,) AKHEERDEE PURAMANICK (No. 17,) NATOO SHEIKH (No. 18,) MELAI SHEIKH (No. 19,) SAHEBDEE PURAMANICK (No. 20,) AMEER SHEIKH (No. 21,) ZURIP SHEIKH (No. 22,) JOHARDEE SHEIKH (No. 23,) MEPUN PAIK (No. 24,*) NURUNDEE SIRDAR (No. 25,*) SOKTA PAIK (No. 26,) CHAND PURAMANICK (No. 27,) MOLAM SHEIKH (No. 28,) DOORGANATH KUR (No. 29,) PITTAMBUR NAG (No. 30,) KOORAN SIRDAR (No. 31,) AJMUT SHEIKH (No. 32,*) PACHKURREE SHEIKH (No. 33,) KHEPOO SHEIKH (No. 34,*) MOHIOODDIN MEAH (No. 35,*) SONA FOKEER (No. 36,*) CHAND SHEIKH (No. 37,*) OOMUR PURAMANICK (No. 38,*) TORIP MOLLAH (No. 39,*) AND RAJCHUNDER CHUCKERBUTTY (No. 40.)

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The sentence recommend-

CRIME CHARGED.—Nos. 1 to 39, having been illegally assembled, armed and having committed an affray in which Lall Khan and Kidder Sirdar were killed, and Shoritoollah, Someer Khan, Isharut Meer, Abed Sheikh, Boodhoo, Toofanee, Nathoo and Ahkundee were wounded. No. 40, 1st, gross neglect of duty in that he, being a darogah of police and having know-

* Acquitted by the lower Court.

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ledge of the likelihood of such affray, took no steps for the prevention thereof; 2nd, guilty knowledge of the said affray and false report and concealment of certain circumstances connected therewith.

Committing Officer.—Mr. T. E. Ravenshaw, Officiating Joint-Magistrate of Pubnah.

Tried before Mr. L. S. Jackson, Officiating Sessions Judge of Rajshahye, on the 25th February 1858.

Remarks by the Officiating Sessions Judge.—The history of this case has been stated in such detail by the Officiating Joint-Magistrate of Pubna, that I think it needless to take up the time of the Court by a repetition of the narrative, suffice it to say that large estates left by the deceased, Mirnomoye Debya are claimed on the one side by her alleged adopted son, Sarodaprosaud Laheery, and on the other by Doorgadass Chowdhry, on behalf of his wife and others by virtue of a pretended "*hibah*" from the late proprietress. That in addition to the usual contest for the registry of the claimants' names in the Collector's office, each party had indicated a determination to support his claim by force, and had consequently been bound over in heavy recognizances to keep the peace. That an order was passed by the Board of Revenue upon the mutation of names, in favour of Sarodaprosad's title, reversing the decision of the local authorities. This order was passed on the 21st August and the affray took place at day light on the 25th of that month, in the attempt (encouraged by the Board's decision) to obtain possession of the Boalmari cutcherry then occupied by Doorgadass.

ed by the Sessions Judge passed upon some of the prisoners, others considered less guilty sentenced to different degrees of punishment from four to twelve years' imprisonment with labor.

Upon the question whether both parties could be considered equally guilty, or whether, as contended for by their counsel, the party upon whom less punishment was inflicted could be altogether exculpated as acting in self-defence, the Court held, that every person had a right of private defence, either of his person or his property, against any assault, from which he has good reason to apprehend, that either death or some grievous bodily harm would ensue, the right commencing when the danger to the property or the person commences and continuing until that danger ceases; that it could only arise where there was imminent danger to the life of the party attacked, who being unable to put himself under the protection of the law therefore took the law into his own hands, and was limited to the infliction of such injuries, as may be actually necessary for self-preservation; that this is the principle laid down by many high legal authorities; that the extent or imminence of the danger, and the necessity of taking life in defence of life, are important points to be judged of in each case by its own peculiar circumstances.

The Court also held that the circumstances of the present case were very different from those of Gooroodoss, 15th July 1852, in which this Court (present Mr. J. R. Colvin) acquitted the prisoner on the ground that they were justified in repelling a forcible and tumultuous attack upon the cutcherry in which they had confined two ryots, although they were liable to punishment upon proof of any illegal violence which they may have committed on the ryots. In this case there had been a long and hot dispute between the parties, and although they had been bound over under heavy recognizances to keep the peace they had made every preparation for attack, and instead of seeking the protection of the law were determined to oppose *vi et armis*,—The sentence of two years' imprisonment passed upon the Darogah was reversed, the Court considering the evidence sufficient only to convict him of culpable neglect of duty.

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The darogah of thannah Chatmohur, although he had notice of the affray very early on the same date, it seems, despatched no report of the occurrence until the morning of the 27th, misconduct on his part, which has very greatly enhanced the difficulty of bringing the guilty persons to trial and which forms a principal ground of accusation against the darogah himself, prisoner No. 40 in the present case.

Thirty-nine persons, including all those under reference, excepting No. 40, were committed on the charge of having been actually concerned in the affray attended, as it was, with double homicide and with the wounding of at least eight individuals. The charge against prisoner, No. 40, who, for convenience's sake, was included in the same calendar and tried at the same time, was two-fold. 1st, gross neglect of duty in taking no precautions to prevent the affray, and 2nd, misconduct after it took place, in having a guilty knowledge of the circumstances, and concealing from the Magistrate many matters connected therewith, which last allegation may be held to include great delay in communicating information, and thus raising obstacles to the progress of inquiry.

The evidence against the actual affrayors, may be classed under three principal heads.

I. The witnesses to the fact who recognized and who now identify various prisoners.

II. The proof deducible from the prisoners' own admissions, and the appearance of injuries on the persons of some of them, as deposed to by the medical witness, and III. The circumstantial evidence of different kinds.

Of the eye-witnesses only five were in the first instance examined by the darogah, who, a few days after the inquiry commenced, was superseded by the Deputy Magistrate, Moonshi Wasifoodeen. This officer having been deputed by the Joint-Magistrate to conduct the investigation personally, arrived on the spot about the 4th September and with considerable difficulty, as he states, procured the attendance of the remaining witnesses, Nos. 6 to 13. The whole thirteen have been examined at great length in this Court and with the exception of *Tajoo*, No. 5, and *Patgee Sirdar*, No. 13, appear entitled to credit for truth and good faith. The prisoners whom they severally identify are *noted in the comparative statement.*

Tajoo, on his attention being called to the fact that he had in previous depositions mentioned many names of persons, whom he did not name in this Court, declared that he had been threatened with fine by the Joint-Magistrate if he did not name a number of persons, on which he had falsely named several. The Joint-Magistrate being called into Court and confronted with the witness, indignantly denied the fact, and the witness was left under orders of commitment for perjury.

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Again *Patnee Sirdar*, No. 13, being called on to identify the persons whom he had recognized, but did not know by name, pointed out in succession every single prisoner in Court, except the last, No. 39, whereas before the Magistrate he had identified only twenty-six. Such wholesale recognition was of course fatal to the witness's credit. One other witness, I should mention, *Bhoobna Puramanick*, No. 9, gave his evidence in a state of nervous trepidation, which made cross-examination difficult and left an unsatisfactory impression, although I do not believe the witness really spoke falsely.

It will be seen that the additional witnesses procured by the Deputy Magistrate have identified more of the rioters than those at first sent in by the darogah, and further that they give an account of the business less favourable to Doorgadass' party than those original witnesses, who try to make it appear that to some extent Doorgadass acted only on the defensive.

As to admissions by the prisoners, there are confessions more or less full before the Deputy and Joint-Magistrate, recorded against the following prisoners.

No. 12, BADOO „ 14, TOOFANEE „ 16, KANCHEE „ 17, AKURDEE	Being confessions of positive complicity in the affray.
„ 18, NATOO „ 22, ZURIP and 23, JOHURDEE 33, PACHKURRI	Admissions that amount to accessaryship

Among these that of Akhurdee, prisoner No. 17, was not very clearly attested. The law officer, however, took no exception to its being received, and I have therefore admitted it in evidence. The prisoner being moreover one of those who have been most clearly identified by no less than eleven eye-witnesses.

The prisoners who bear on their bodies the marks more or less distinct of having been present in the fray are No. 12, Badoo, No. 14, Toofanee and No 18, Natoo.

The first of these has received a wound in his eye (from a *bhela* or dart, according to his own confession) which has for the present at least destroyed its vision and has moreover affected him with entire paralysis on one side of his body, the others have slight wounds. The medical evidence was extremely unsatisfactory, being limited to that of Ameer Khan, the native doctor, whose statement was both inaccurate as to facts, and in a scientific point of view good-for-nothing. The Sub-Assistant Surgeon, who was in medical charge of the station, when the

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case arose, and who examined the bodies of the men, who were killed, having been transferred to another appointment, his evidence was not available. It is my intention to urge upon the Government the absolute necessity of taking care that justice is not defeated or impeded, as frequently happens, by such contingencies.

We now come to the purely circumstantial evidence of which a great deal has been recorded, although much of it tends rather to elucidate the history of the case than to establish particularly facts against the prisoners on their trial. The most important witness of this class is prisoner No. 36, *Oojir chowkedar*, who took the body of Lal Khan, deceased, to the thannah, who found the prisoners *Romanauth* and others in consultation at Jugowdhun Talookdar's house at Gooakhura, which is the cutcherry of Sarodaprosad, who is son-in-law of the Talookdar. The witness was desired to take the body to the thannah, and went home to fetch his badge and spear for that purpose; in the interim the head of the corpse had been cut off and Kanchee was then washing some blood from a sword which he held in his hand.

There is a good deal of confusion with regard to the removal and treatment of the bodies of the two men who were killed in the affray; but I may explain, what appears from the mofussil record, that the party of Sarodaprosad having failed in their object of taking the cutcherry were yet strong enough to carry off both the dead bodies as well as the wounded people. That their first idea was to give information at the thannah that the opposite party had made an attack for the purpose of plunder, upon the premises of Romanath in Soojapara (Romanath being a gomashta of Sarodaprosad) and had killed and wounded several of their people; but as Lal Khan was a well known sirdar in Doorgadass' service, it was necessary for their purpose to prevent recognition of his body which they sought to do by cutting off his head. The head was buried, and found many days afterwards by the police under the Deputy Magistrate's orders.

The evidence of this witness *Oojir* bears very strongly against the prisoners, whom he names, and also shews in a clear light the apathy, neglect and misconduct of the darogah, who did not even take his deposition, and several days afterwards falsely reported the witness as absconded. He deposed in this Court with great fulness, and was subjected to a severe and searching cross-examination without any material damage to his credit as a witness.

I may next mention the witnesses, Nos. 52, 54, and others who prove the assemblage of armed *lattials* at the Boalmari cutcherry under the direction of Kheroo Sircar, prisoner No. 1, No. 55, who saw Ishur Sircar, No. 3, and others, running away

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from Boalmari in the morning of the affray. No. 75 who knows Romanath well and saw him at Soojaparah on the day the darogah came there (this is to disprove the *alibi* set up,) No. 65, and others who witnessed the finding of Lal Khan's head. No. 69 who describes Kheroo and Kamaldee on one side and Bhekoo on the other having run into the thannah with their different versions of the morning occurrence, and No. 14, Tomizuddin burkundauz, who states the proceedings taken by the darogah after he heard of the disturbance.

*Bhagirut Sircar,** a quiet elderly man, shows that he was formerly gomashta in Boalmari under Mirnomoye Debya, and was discharged in *Asin* when Kheeroo Sircar succeeded him and it was arranged to occupy two huts, the dwelling-house of one Bohurdi an absconded ryot, as a cutcherry or house of call. This witness describes the progress of the dispute up to the month of *Asin* when he went to his own village. *Hafiz,* No. 80, proves the absence of Lukheekaunth Dutt from Pubna about the time of the affray when he was a defendant in a case then pending before the Sudder Ameen, and was produced several days afterwards by *Kistodhun,* the mooktar, (this man will be found among the witnesses for the defence.) These are the more important of the witnesses in this class, with Moonshi Wasifuddin, Deputy Magistrate, whom I called, and who deposed to various particulars connected with his proceedings.

* No. 78.

Nearly all the prisoners were defended by Counsel who spared none of the witnesses, and of whom Baboo Gobindnath Sen especially showed marked ability and zeal on his client's behalf. Both pleaders addressed the Court at considerable length, and have at my request, placed on record the substance of their observations.

The prisoners of course had most of them a substantive defence in the shape of *alibis,* and had named a prodigious number of witnesses in support thereof, but on behalf of several, their pleader, with excellent judgment, declined calling those witnesses, preferring to rest their defence upon any established weakness of the case for the prosecution, than upon the stale and worthless expedient of an *alibi.*

But in addition to the other pleas put in for the servants of Doorgadass (prisoner No. 1, &c.,) a distinct position was taken by their Counsel Baboo Bhagiruth Odhikari who maintained that, admitting the fact of a disturbance having taken place, which indeed it would be difficult to deny, yet that his clients, if any of them should be taken to have been engaged in it, could not be subject to penal consequences as they had simply stood on the defensive, and repelled a wanton aggression, and he referred to the N. A. R. for 1853, p. 346, the case of Mr. J. P. Hampton *versus* Ramlall Mookerjea and others and to

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Regulation VI. of 1828 in proof that in such a case it was justifiable to repel force by force.

There is, however, a wide difference between this case and the one referred to. In Mr. Hampton's case, the scene was that gentleman's own residence, where his family and his property notoriously were, and which was defended by his own household against a sudden and unprovoked attack. In this instance we have a disputed possession, a state of armed preparation for months back, a place which called a cutcherry, was in reality an outpost,—see the Deputy Magistrate's deposition and that of Bhogirut Sircar. A force of *lattials* quite needless for the purpose of collections, and quite disproportioned to the importance of the place, moreover the circumstances of the fray as described both by the witnesses and in the prisoner's confessions, put the doctrine of mere defence out of the question, and it is clear that there was nothing in the cutcherry which rendered it either necessary or justifiable to defend it at the sacrifice of human lives.

Some exception was also taken to the manner in which evidence had been obtained, and it is insinuated that in fact several zemindars had combined to furnish witnesses against the accused. No attempt, however, was made to prove any thing of the kind, and the efforts to shake the testimony of individual witnesses were, as I have said, unavailing.

It is needless perhaps to remark at much length upon the pleas of *alibi* in support of which witnesses were called. They were in general contemptible in the extreme, being supported by witnesses neither respectable in point of standing, nor shewing reason for their recollection of the date to which their statements referred. Those most worthy of attention are the cases of Bheekoo Sircar and Lukheekaunt Dutt; in regard to the first, it seems to me that the witnesses had really gone upon some one day with the prisoner to hear a musical performance, and that the day of the affray was afterwards pitched upon, otherwise it is impossible that the witnesses should have heard nothing of the affray which undoubtedly took place that morning within a mile of them.

The *alibi* of Lukheekaunt is supported amongst others by Kistodhur Mojoomdar, a mookhtar of Pubna, who is said to be a man of substance and influence, but this man's deposition, besides being directly contradicted in various particulars by those of Hafiz burkundaz, Kowser Mia and Oomanath Bhuttacharj mohurrir and by the record of the case in which the prisoner was then implicated,is in itself improbable, and I have directed proceedings to be taken against the mookhtar for perjury.

The ground of reference to the Court in this case is partly the necessity of a much severer sentence than I am competent to pass; it is also on account of a slight difference between

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myself and the Law officer regarding two of the prisoners. Out of those whom he convicts, I consider that as against two of them Sokta No. 26, and Molam, No. 28, the evidence is so weak as to justify a doubt of their having been present. The latter in particular, is an elderly man and from his appearance not, I think, very likely to have been personally engaged. Sokta is identified by only one eye-witness in addition to that No. 13, whose recognition I have previously mentioned as good for nothing. Molam is mentioned by the same No. 13, and two others but one of these No. 8, on being told to identify Molam, pointed out another old man named Asmut instead of him. There is no other evidence of any kind implicating either of these two. I would therefore give them the benefit of the doubt, and recommend their acquittal.

There is nothing to show who inflicted the mortal wounds upon Lal Khan and Khirdir Sirdar, nor is there any medical evidence on this point; but it is sufficiently clear that they were killed in the affray. In apportioning the measure of punishment we can only look to the evidence generally, to see who the parties most active or exercising a principal influence were. The leaders on either side were undoubtedly Kheroo Sircar, No. 1, Romanauth Sircar, No. 15, and in a subordinate degree, Ishurchunder Sircar, No. 3, Bhekoo Sircar, No. 10, Lukheekaunt Dutt, No. 13, and Pittambur Nag, No. 30, who are all people of a superior class, while of the *lattials* Mobroo, No. 7, appears to have commenced the fray and to be a notorious *tirundaz*. I propose that these men be severally transported for life.

In the next degree, Soritoollah, No. 2, Somir No. 4, Akhurdee No. 17, Melal, No. 19, Saheedee No. 20, Ameer, No. 21, appear to have been conspicuous, and these six, I would sentence to imprisonment for fourteen years.

The rest who are convicted as principals, viz. Kamaldee, No. 5, Khosal, No. 6, Bhadoo No. 9, Badoo, No. 12, (in consideration of the serious injury he has received) Toofanee, No. 14, Kanchee, No. 16, Natoo, No. 18, Zurip, No. 22, Johurdee, No. 23, Chand, No. 27, Kooran, No. 31, I would sentence to seven years' imprisonment.

Pachkurree, No. 33, is convicted by the Law Officer, as "privy and accessary after the fact." I would sentence him to one year's imprisonment with labor. These sentences, although severe, are not more so than those passed by the superior Court in the case of Chunder Sikoor Sircar and others N. A. cases 1856 Part VII. page 6. The circumstances of this case hardly yield in atrocity to those of the case just quoted, and there seems to have been in the present instance even more deliberation. I think the case is therefore one for marked severity.

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The Law Officer convicts the darogah of gross and culpable neglect of duty in four instances which he specifies. In this finding I concur generally. I cannot indeed go so far as the Joint-Magistrate or his Deputy in imputing actual corruption or participation in the crime established against the other prisoners, to the darogah, and I observe that the Joint-Magistrate's statement of the case alleges matters against him, such as the receipt of bribes, &c., of which no proof has been offered; but I think it clear that there appears on the record a criminal want of vigilance on the darogah's part before the disturbance. Even if this were all, I should be disposed to punish the apathetic officer, whose indifference had permitted so serious an outrage to occur within three or four miles of his thannah, for I think our police officers, and specially the better paid classes should be made to feel the responsibility belonging to their offices to feel that the peace of their jurisdictions is primarily in their hands and that they are bound to take all reasonable precaution against that peace being disturbed. But the darogah's case is far worse, for it is plain that he did not, even after the affray had occurred and was manifestly known, take the steps incumbent upon an active and conscientious public functionary. He neither proceeded himself immediately to the spot, nor transmitted intelligence promptly to the Magistrate. He took no steps for the apprehension of the parties really and chiefly culpable and he detained the body of the man Lal Khan for two whole days, having ordered it back to Soojapara instead of sending it on to the Sudder Station. He was evidently in communication with the talookdar family, who were at the bottom of the disturbance, and by his dilatory and ambiguous proceedings occasioned the greatest difficulty in afterwards bringing the guilty to justice.

The darogah's defence negatives the supposition that he is wanting in ability, and with reference to the above considerations, I have recorded a sentence of two years' imprisonment in the civil jail at Rajshahye and 1,000 rupees fine, commutable to one year more without labor. The sentence will not however be carried into effect pending the Court's orders on this reference.

For a proper understanding of the distances and relative situations of the places whose names occur in this case, such as Boalmari, Soojapara, Gooakhura, Chatmohur, Bhaugoora, Mundotosh and others, I beg to refer the Court to the pergunnah Map (pergunnah Sonabazoo,) of which I have desired the Joint-Magistrate to cause a copy to be submitted to them with the record, or at the time of hearing.

I beg to remark that these observations are far from indicating the trouble I have bestowed upon this case. The trial occupied six full days, of which no sitting was less than nine

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or ten hours, and are extended to eleven hours. I have not sought to give a complete history of the case, nor a formal resume of the evidence but merely to furnish such observations occurring to my own mind in connection with the case, as it seemed right to lay before the Court, and as did not plainly appear upon the record.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The prisoners Nos. 1, 2, 3, 4, 5, 6, 7 and 9, have been defended by Mr. Money and Baboo Unodapersaud Banerjee.

The prisoners Nos. 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 30 and 33, by Baboo Aushootosh Chatterjee and Baboo Unnoocool Mookerjee.

Baboo Dwarkanath Mitter appeared for the darogah prisoner No. 40.

Mr. Money in behalf of his clients admitted the testimony of the witnesses from Nos. 1 to 5, but impugned the evidence given by the witnesses from Nos. 6 to 13, as being improbable, inconsistent and open to great suspicion.

He argued that Doorgadass' party was in possession of the cutcherry. That it had been erected by them, that they were collecting rents, that they were met together for a lawful object, that on their part there was no previous unlawful concert; and as the opposite party were the assailants and attacked them, the law gave them the right of self-defence, and of repelling that attack, and if, in doing so, death ensued, it was justifiable homicide, and they were fully entitled to an acquital. In support of his argument the learned Counsel cited Russell on crime Section 2 Chapter 3, page 662, and Roscoe's Criminal Evidence, page 765.

Baboo Unodapersaud Banerjee followed on the same side, and cited Archibald on Criminal Evidence, page 507, and a precedent of this Court. (Present: J. R. Colvin) in the case of Gooroodass 15th February, 1852 and another of the 8th December 1852. (Present: W. Jackson.)

For the other prisoners it was contended that the evidence was not sufficient for their conviction, that they were not the aggressors but the assailed, and that the opposite party had been making preparations for months.

In behalf of the darogah, prisoner No. 40, Baboo Dwarkanath Mitter made a very eloquent and able defence. He pleaded that the Sessions Judge acquitted the Darogah of corruption or participation in the crime, and that there was no law prescribing for gross neglect of duty, of which he was found guilty, the punishment to which he was sentenced. He cited in support of his argument Section 5, Regulation VIII. of 1809, and Section 22 Regulation XXII. of 1793 and a precedent of this Court Volume I. Select Reports, page 180, and maintained, that the utmost punishment that could be inflicted for such an

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offence, when the principal elements of criminality were wanting, was suspension from office. After referring to the different reports submitted to the Darogah subsequent to the affray, he laid great stress upon the fact, that the intelligence received by the Darogah immediately after the occurrence was conveyed by the partizans of the opposite factions; that prisoner No. 1 reported the affray as having taken place at the cutcherry at *Bealmaree* and the prisoner No. 10, who followed him, reported that Doorgadass' party had attacked the premises of his brother Rammanath in Soojapara; that it was impossible for the Darogah to tell on the receipt of such opposite and conflicting information which was the true story, and that under the provisions of Section 14, Regulation XX. of 1817 he was bound to go to Soojapara and prosecute his enquiries; that it was only on proceeding there he could discover whether Lal Khan, whose headless body had been brought to the thannah, was killed at Soojapara or not, and he concluded by referring to the proceedings and the evidence on the record, to show, that the Darogah had done his duty, in doing all he could do, during the short period he was employed in the local investigation; and that the Deputy Magistrate, although he remained three months on the spot, and gained credit for his zeal, added very little to the information which the Darogah had already supplied.

For the prosecution no one was heard on the part of Government. Mr. Allan and Baboo Sumbonath Pundit appeared in Court after the case, the hearing of which occupied three days, had closed.

The Magistrate and Sessions Judge in their remarks on this case have entered into full particulars of the state of the opposite parties previous to the affray. It would appear from what they state, that there had been constant disputes, and that *lattials* were collected on either side. It is clear from the whole evidence on the record, that both parties implicated in this affray, had made previous preparations for it, although they had been bound over under heavy recognizances to keep the peace.

It is clear also, that, in consequence of decisions given by the local authorities in favor of his claim to have his name registered in the Collector's Office, Doorgadass took possession and was in possession of the Bealmaree cutcherry; and that when those decisions were reversed by the Sudder Board of Revenue on the 21st August in recognition of the title of Sarodapersaud, his party arranged their plans, and on the 25th August attacked the cutcherry and attempted to oust the opposite party from it.

In this attempt two men were killed and several wounded.

It is an important question under such circumstances, whether both parties can be considered equally guilty.

Every person has a right undoubtedly of private defence,

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either of his person or his property, against any assault, from which he has good reason to apprehend that either death or some grievous bodily harm would ensue, the right commencing when the danger to the property or the person commences, and continuing until that danger ceases. The right depends, time place and weapon considered, upon a reasonable apprehension of death or bodily injury.

It can arise only in cases in which there is imminent danger to the life of the party attacked, who is unable to put himself under the protection of the Law, and therefore takes the Law into his own hands, and is limited to the infliction of such injuries as may be actually necessary for self-preservation. This is the principle which has been laid down by many high legal authorities. The extent or imminence of the danger, and the necessity of taking life in defence of life are important points to be judged of in each case by its own peculiar circumstances.

If I thought that the case before me was in its circumstances entirely similar to the case of Gooroodass, which was decided by this Court on the 15th July 1852, and to which the Court's attention has been drawn, I should have no hesitation upon the authority of that precedent, which is consistent with the principle of self-defence to which I have adverted, in acquitting the prisoners Nos. 1, 2, 3, 4, 5, 6, 7 and 9. In that case Gooroodass Mitter a gomastah, who was alleged to have confined in his cutcherry and ill-used two ryots, was out of retaliation attacked by a large body of villagers; and in the affray one of the cutcherry *nugdees* was killed in the attack. It was justly held by the Court (Mr. J. R. Colvin) that although the gomasta and his servants were liable to punishment upon proof of any illegal violence which they may have committed upon the two ryots, they were justified in repelling a forcible and tumultuous attack which was made upon the cutcherry, one of their companions being killed in that attack.

The circumstances of this case are very different. Here both parties had been in hot dispute for some time until the animosity between them amounted almost to a blood-feud.

They had been bound over under heavy recognizances to keep the peace; and yet each party strengthened itself, and prepared for the expected collision. *Lattials*, as the Magistrate states, were collected. Here, instead of seeking the protection of the Law, each was determined, whichever party commenced the attack, to oppose *vi et armis*. The right of self-defence may be carried to a great extent, and almost to the extent, for which Mr. Money in his argument contended; but it could not under these circumstances be held completely to justify the prisoners, whom he defends, in the part they took in this fatal affray. The other side, however, were clearly the aggressors,

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the party of Doorgadass being in possession of the cutcherry they attacked. *The right to possession being disputed* does not render so wanton an attack ending in loss of life the less criminal. But *the fact of possession* does certainly in my opinion, extenuate to some extent the crime, of which the party, who repelled the attack, has been found guilty.

While therefore I uphold the conviction of the prisoners Nos. 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 30 and 33, as well as of Nos. 27 and 31, who have not been defended by Counsel, and pass sentence upon them as recommended by the Sessions Judge, concurring with him as to the necessity of a severe example, I would, under the circumstances of the case, considering the other prisoners less guilty, but keeping up the distinction drawn by the Sessions Judge as to the degree of punishment each deserves, sentence the prisoners Nos. 1, 3 and 7, to twelve years' imprisonment: the prisoners Nos. 2 and 4, to seven years' imprisonment with labor in irons and the prisoners Nos. 5, 6 and 9, to four years' imprisonment each with labor commutable to a fine of rupees 50 each.

The evidence against the prisoners Nos. 26 and 28, is not sufficient for their conviction; and in concurrence with the Sessions Judge I acquit them and direct their immediate release.

With regard to the Darogah, who was so ably defended by Baboo Dwarkanath Mitter, I do not think, after very carefully going through the case, that as he was acquitted of gross corruption and all participation in the crime, either the Law cited by the pleader or the evidence on the record justified the sentence passed upon him. There is sufficient to convict him of culpable neglect of duty. He must have known, as he knew that he was responsible for the peace of his division, that a breach of the peace was likely to occur; and he could, with any common degree of vigilance, have prevented the affray; or if that was impossible, which I doubt, he could at any rate have prosecuted his enquiries in such a manner as to cause the arrest immediately after the occurrence not only of the perpetrators but the instigators of the crime, and have submitted ample evidence for their conviction. While therefore I acquit him and direct his immediate release, I leave it to the local authorities to determine, whether an officer so wanting in vigilance and precaution, and so neglectful of his duty, is deserving of future employment under Government.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT

versus

MADHUBLALL PANRAY (No. 3,) AND RAMDEEN TEWARY (No. 4.)

Midnapore.

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The prisoners convicted of the offence charged against them and sentenced to 9 years' imprisonment with labor. The Court found it proved that they agreed together and conspired from malicious and vindictive motives falsely to charge the Subadar Major of the Shekawatee battalion with treasonable correspondence, a crime against the state, for which, had he been, upon the evidence they produced, brought to trial and found guilty, he would most probably have suffered the extreme penalty of the law.

Held that the objection, that Sheikh Daood, the injured party, should himself have instituted the prosecution, is not material, when the crime is considered not only as a guilty combination against the individual, but a gross perversion of public justice, for which the indictment by the Government on the prosecution of the Subadar has been properly laid.

CRIME CHARGED.—The prisoners are charged with conspiracy against Sheikh Daood, the Subadar Major of the Shikawuttee battalion in having jointly produced a forged and treasonable letter purporting to be from him of which he knew nothing.

Committing Officer.—Mr. J. M. Lowis, Officiating Magistrate of Midnapore.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 16th December, 1857.

Remarks by the Sessions Judge.—The prisoners plead "*not guilty.*" Their defence, if it can be called such, is nothing more than mutual recrimination and they declined having their witnesses examined.

Sheikh Daood the Subadar Major of the Shekawattee battalion said he had no complaint to make; that the Colonel commanding confronted him on different dates with the two prisoners; that he had never seen them before, and that they had both denied all knowledge of him; that he had heard nothing from the Colonel or Captain of the corps, but that the darogah, witness No. 1, Mungul Pershad Singh had informed him that the prisoners had accused him of sending a treasonable letter to some Rajah in the N. W.; this was not said, however, in the presence of the prisoners. He adds, the prisoners did not personally accuse me that I should charge them with conspiracy, but that if it appeared that they really did so, he would of course prosecute.

From the evidence for the prosecution it appears that Madhublall Panray No. 3, was a Jemadar of the police, who had incurred the displeasure of the Magistrate, shortly after he introduced the other prisoner Ramdeen Tewary, No. 4, to the darogah of the city thannah, witness No. 1, and vouched for his honesty and faithfulness. These prisoners then insinuated

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to the darogah and Magistrate that the native officers of the Shekawattee battalion had established a Dâk for correspondence with the enemies of the state in the N. W. Provinces, that the runners not being then available, overtures had been made by the prosecutor to the prisoner Ramdeen Tewary to convey such a letter. They afterwards brought to the Magistrate the Nagari letter marked P. on the record intimating that it had been given to Ramdeen Tewary by the prosecutor and was addressed to the Baboo of Jugdispore.

Though the committing officer was unable to get its contents translated, nor was there any one forthcoming at the trial who could do so, the purport of this letter comes out in the deposition of Mr. Lushington to whom it was partially explained by the darogah and the prisoner Madhublall Panray at the time of its delivery to him; and is to the following effect, "That they (the regiment) were in a helpless condition; that the messengers had been sent by them to three different parties without eliciting a reply; that they wanted his encouragement and were ready to act under his orders." An authenticated copy of Mr. Lushington's examination of Ramdeen Tewary is with the record and in it a detail is given of how the prisoner said he had become possessed of the letter. This letter marked P. on the record, and the copy of said examination had been verified by Mr. Lushington, who states that the boldness and courage with which this prisoner persisted in his story, almost induced him and his subordinate to put faith in it.

Mr. Lushington the Officiating Magistrate was obliged to leave the station owing to ill health, and left the matter in the hands of his *locum tenens* Captain Keighly who informed Captain Forster of the circumstances.

The evidence of this officer corroborates the statement of the Subadar Major Sheikh Daood as to the prisoners and himself being confronted. He deposes that the prisoner after denying all knowledge of Sheikh Daood stated that the letter then shown him (copy marked A.) had been put into his hand by one Madhublall Panray. This prisoner when confronted with Sheikh Daood also said he did not know the man, but admitted that the paper marked A. was a copy that he had made of a letter then with the Officiating Magistrate. Captain Forster further deposes that both the prisoner Madhublall Panray and the Darogah who was present stated their inability to read this paper.

The above facts are not denied by the prisoners in their defence. It was contended by the vakeel of Madhublall Panray, that his client was no more guilty than the Darogah for bringing to the notice of his superior the information he had received from the prisoner Ramdeen Tewary. But it is distinctly in the evidence of the Darogah that Madhublall Panray vouch-

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ed for the honesty and truthfulness of the informant whom he had introduced. Again, it is a very suspicious circumstance that he should so soon after falling into disgrace have brought forward and backed the said Ramdeen. Further, his declining to divulge the contents of the paper which he had copied and partially explained to the Magistrate, when asked to do so by Colonel and Captain Forster tells weightily against his innocent participation in the transaction, and precludes the possibility of a belief that he was simply the dupe of Ramdeen Tewary.

The motive of the prisoners is pretty evident. Not long before, one Bindabun Tewary, a police burkundaz, attached to the city thannah, had been arrested by the Subadar Major and others of the corps and tried for tampering with the sepoys of the Shekawuttee battalion. He was sentenced to death by a Court Martial and executed. He was a Brahmin and so are the prisoners, and there is little doubt that the honest and straight-forward conduct of the prosecutor on that occasion called down upon him the spite and malice of the prisoners. The charge which the prisoners conspired to bring against Sheikh Daood the Subadar Major jeopardized his life, and the mischief likely to have resulted had a ready credence been given to it, might have been most serious. The jury have found both the prisoners guilty of the charge brought against them and in this verdict I concur, and deeming their act a gross conspiracy to blacken the character of an officer, whose conduct and faithfulness had been very recently marked by the distinguished approbation of the Government of India, I would recommend that the prisoners be sentenced each to nine (9) years' imprisonment with labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The prisoner No. 3, has been defended by Baboo Ashotosh Chatterjee on the grounds chiefly that there was no direct evidence against him, that what there was, amounted only to suspicion, and that the injured party, Sheikh Daood, the Soobadar of the Shekawattee regiment should have himself been the prosecutor.

I have gone very carefully through all the proceedings on the record, and the evidence and can come to no other conclusion, than that the charge is established against both the prisoners. It is impossible under the circumstances to believe No. 3, could have been the dupe of the prisoner No. 4.

The objection, that Sheikh Daood, the injured party, should himself have instituted the prosecution, is not material, when the crime is considered not only as a guilty combination against the individual, but a gross perversion of public justice, for which an indictment by the Government on the prosecution of the Soobadar has been properly laid.

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There appears to have been no reason for suspecting the Soobadar. The prisoners could show no probable cause for the accusation they brought against him. They agreed together and conspired from malicious and vindictive motives falsely to charge him with treasonable correspondence, a crime against the state, for which, had he been, upon the evidence they produced, brought to trial and found guilty, he would most probably have suffered the extreme penalty of the law.

They have been justly convicted, and I sentence them, as recommended by the Sessions Judge, to 9 years' imprisonment with labor, a punishment, which, for such an offence, and the consequences which might have resulted from it, is perhaps more lenient than they deserve.

PRESENT:

A. SCONCE, ESQ., *Judge* AND D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT

versus

MEER AHAMUD ALLEE.

Nuddea.

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The prisoner was convicted of forgery and sentenced, under the circumstances of the case, to one year's imprisonment with labor. Held by the Court that the offence committed by the prisoner was forgery, as defined in Clause 3, Section 4, Regulation II. of 1809 to be the fraudulent and injurious fabrication or alteration of written papers of whatever description, that the alterations were *false and intended to deceive,* and moreover *in themselves injurious and intended to be injurious.* That the circumstances of the present case were of a different character from the cases cited by the prisoner's Counsel as a bar to his conviction, and that the acquittal of a prisoner on a charge in which the forgery was not proved to be injurious cannot govern the issue of a trial on which *injury is established.*

CRIME CHARGED.—Forgery in having altered and mutilated the *dawk challans* of the 4th and 5th October last, such alteration and mutilation being for his own advantage, with a view to screen himself from the consequence of gross neglect.

CRIME ESTABLISHED.—Forgery.

Committing Officer.—Mr. F. R. Cockerell, Magistrate of Nuddea.

Tried before Mr. R. M. Skinner, Sessions Judge of Nuddea, on the 1st February, 1858.

Remarks by the Sessions Judge.—There can be no doubt that the prisoner altered the dates of the *challans* of 4th and 5th, he does not deny it. The evidence of the witness shews that he did it after the *challans* were returned to him and the non-receipt of a *lefafa,* not then apparent in the *challan* received on

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5th October, was reported by the Foujdary Dâk Moonshee. By an order of the Magistrate dated 14th September, the thannah daks were despatched in the *day* time up to 4th October: when, by order of *robakary* of 3rd October, the Moonshees were ordered to revert to the custom of despatching at night. This corroborates the evidence of the witness, (The Foujdary Dâk Moonshee of the Magistrate's Court,) and shews that the dates of the *challans* received on the 5th or 6th have been altered for the *challan* from Ranaghat purporting to be of the 4th, (but which evidently was originally dated 5th) is stated in column 4 to have been despatched at 1 A. M. and the time of arrival in column 5 is morning 6th, whereas the one which had been altered from 4th to 5th has an entry in column 4 to the effect that it was despatched at 10 A. M. and had arrived at the sudder station *early* on 5th, now if it left Ranaghat at 10 A. M. on 5th, it evidently could not have arrived here *early* the same morning.

Again the *robakary* of 3rd October directed that the hour of despatch of the daks should be changed from 4th idem. If the order reached Ranaghat (16 miles off) in time for the dak Moonshee to act up to it on 4th idem, and to despatch the *challan* of that date at night instead of in the morning, then how is it that the *challan* now altered to 5th should appear to have been despatched at 10 A. M? i. e. reverting to the custom which prevailed from 14th September up to the arrival of the Magistrate's order of 3rd October.

I can but conclude that the *challan* originally dated 4th October, was despatched at 10 A. M. before receipt of the orders of the previous date, and arrived, (as noted in the penultimate column of the *challan*) at the sudder station the following morning, whereas the date of the 5th was despatched at night and arrived the following morning i. e. on 6th in pursuance of the orders of the 3rd idem. The dates of the *challans* have evidently been altered by the prisoner, as stated by the witness, subsequently to the return of the *challans* to Ranaghat. The memorandum of the Foujdary dak Moonshee in the penultimate column of the *challan* originally dated 4th, shews that the *lefafa* from the Kalaroa Moonshee to the Hatra dak Moonshee was not received with the other letters and the books therein cited, nor does it appear to have been in the *challan* when the witness received it, for all *lefafas* appear in the three first columns of the *challan*, whereas this has been evidently appended in the 4th column after the total of eighteen *lefafas* two books and the letter in English from the Magistrate from Mulnath.

The omission of the *lefafa* from Kalaroa was detected on inspecting the Kaguzpookooria *challan* making mention of it, see report dated 5th October (document 2) from the witness to the Magistrate.

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This report shews that the *challan* now altered to 5th was the one referred to, as the other now altered to 4th October, did not arrive till the next day. The four *challans* were returned to Ranaghat, and yet the dak Moonshee then took no notice of the memorandum dated 6th October mentioning that eighteen *lefafas*, two books and money and a paid letter had been received, (but not of the Kalaroa *lefafa*) but on 25th October in answer to a parcel of 21st idem gave his false report that the Magistrate's *lefafa* had been sent in on 4th idem, and when the *challan* of 3rd, 4th and 5th were called for on 21st November he altered the dates of those of 4th and 5th October and sent them in on 22nd November.

The defence is that through press of business defendant inadvertently wrote 4th instead of 5th and 5th instead of 4th and then, as there was a blot in converting 4 into 5 he wrote 5 clearly, above the incorrect date. He pleads that there is no alteration in the total of *lefafas*, as there would be had he altered the entries subsequently. The total is in Persian and Bengalee and the missing *lefafa* is *the* paid *chitty*.

Now it is clearly seen that the original total of *lefafas* in column 2 of the *challan* received on 6th October, was eighteen. This total is not written in Persian, although column 2 of the other two *challans* exhibits the total of *lefafas* in Persian and Bengalee. The Persian seems to have been an after-thought when he had added the missing *lefafa* in another column of the *challan* returned to him on 6th October to meet the explanation of 25th idem. The missing *lefafa* is evidently omitted in the appropriate three first columns, two *challans* of money are noticed below the eighteen *lefafas* in three first columns. In another column (as well as in column 2.) the total of *lefafas* given was eighteen: *below* that are mentioned two books and an English letter to the Magistrate and the missing *lefafa* was added afterwards. The Foujdary dak moonshee's register shews that on 6th October the letter to the Magistrate from Mulahatte was a paid letter. The defendant now pretends, that the missing *lefafa* is the paid letter noticed by the Foujdary dak moonshee in his memorandum of 6th October on the *challan*. But the said memorandum shews that only eighteen *lefafas*, two books and one paid letter came, besides the two money *challans*.

The non-receipt of the *lefafa* from Kalaroa was distinctly reported on the 5th, the date on which the missing *lefafa*, alluded to in replies from the dak moonshees of Kaguzpookoorea dated 7th October of Baugany dated 20th October, of Kamdebpore dated 22nd idem and Kalaroa dated 13th November, should have reached this, whereas the paid letter which defendant wishes to identify as that now missin g, did not arrive till the 16th and is shewn to have been sent to the Magistrate from Mulahatee.

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The defendant evidently added the missing letter in the *wrong column*, *after* the *challan* was returned and *after* he was called upon for report on 21st October, and the dates of the *challans* were also altered by him after the witness returned them, and after the Magistrate ordered that the *challans* of 3rd, 4th and 5th October should be sent to him for inspection. The witness testifies that the dates were not altered when the *challans* were sent in originally. The jury gave a verdict of guilty of the charge, i. e. forgery in having altered and mutilated the dak *challans* of 4th and 5th October last, such alteration and mutilation being for his own advantage with a view to screen himself from the consequence of gross neglect.

I concur in the verdict and sentence the prisoner to seven years' imprisonment for forgery.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) It has been urged by the prisoner's pleader that the *alterations*, which he is charged with having made, were only *corrections*, but that even if the facts are as the Sessions Judge has represented, the act does not amount to forgery, inasmuch as *no actual injury* was committed, and he cites in support of his argument the decisions of this Court in the case of Ameenoollah, August 6th, 1856. Nizamut Adawlut Reports, Vol. VI. Part II. page 302, and of Ghrimundy Lall and another, 12th November, 1856, page 931. In the first case it was ruled (present: Messrs. B. J. Colvin and J. H. Patton,) that the alteration of the date of an order of the Principal Sudder Ameen passed on an *urzee* of the Nazir of the Court *was not injurious, as no one could be injuriously affected by it*, and the prisoner made it only to screen himself. The Court therefore could not sentence him for forgery. In the second case where a prisoner was charged with causing a forged Bail Bond to be fraudulently executed through another person the Court (Messrs. H. T. Raikes and J. H. Patton) ruled that inasmuch as Clause 3, Section 4, Regulation II. of 1807, provides that the penalties for forgery stated in Section 3 are meant to include all fraudulent and injurious fabrications, &c. of written deeds or papers, and the indictment under which the prisoner was convicted *neither alleged injury to any one*, nor had *such fact been found* by the Judge, the conviction on the charge as drawn was not sustainable and the prisoner was acquitted. It was argued further that in order to constitute the crime of forgery, as defined in Clause 3, Section 4, Regulation II. of 1807, the alterations must be "*fraudulent* and *injurious*" and that the term *injurious* implied *an injury actually committed.*

The Sessions Judge has correctly stated the facts, and upon the evidence it would be difficult to arrive at any other conclusion than that the alterations in the *chullans* were effected by the prisoner for the purpose charged.

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The only question is whether such alterations constitute forgery within the meaning of the Law, Clause 3, Section 4, Regulation II. of 1807.

I cannot subscribe to the doctrine that in order to constitute this crime it is necessary that *some injury should have actually accrued.* It is immaterial in the eye of the law, whether any person *be actually injured* or not by alterations of the nature charged against the prisoner, provided *they may be prejudiced* by them, and provided there be fraud and an intention to deceive. Were it not so, the chief ingredient of the offence, the very germ of this and of every other crime, the *intention,* would be extracted, and the law, instead of imposing a restraint would offer a premium upon its commission.

The Sessions Judge was called upon by the Judge in the English department to explain what evidence there was in this case of *intent* to *injure or defraud some one.* His answer was as follows.

"I conclude that a *lufafa* from Kalaroa was made away with. To conceal this, and to defraud and injure the sender as well as the person addressed, the prisoner altered the *chullans* of 4th and 5th October, after he was called upon for report on 21st idem."

As the opinions of this Court of the 6th August and 12th November 1856, have been cited as precedents by the prisoner's pleader in support of his argument in this case, and as this case is somewhat similar to the case in which the opinion of the 6th August was given, and, as I think it is a question for consideration whether acts of the nature charged and committed evidently with a fraudulent intent, and impeding and intended to impede the course of justice, although they may not be proved to have caused actual injury to any one, still whether they cannot be accounted forgery within the meaning of the law, if any person or the Government or the public may be prejudiced thereby, and as I think for the guidance of the lower Courts an *authoritative* judgment after full argument upon these points is required, and that it should be decided whether the ruling in the precedents cited is correct, or might in any degree be altered or modified, I shall suspend my sentence on the appeal of the prisoner with reference to the merits of the case, until the legal points involved in it have been considered and determined by the Court at large.

D. I. MONEY,
Offg Judge.

28th April, 1858.

The permanent Judges not having acceded to my proposition that the legal point involved in this case should, with reference to the decisions of this Court, which have been cited as precedents, be considered and determined by the *Court at large,* and upon one part of my reference only as to whether fraudulent

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alterations, with intent to impede and impeding justice, constitute forgery, though not resulting in actual injury to any one, having passed a resolution "that as the question must be decided judicially, this meeting can pass no opinion upon it. Under Regulation IX. of 1831, Clause 7, Section 4, the presiding Judge at the trial may, after recording his own opinion, refer the point if necessary to another Judge for judicial opinion" I had no alternative, and gladly availed myself of the assistance of Mr. Sconce, before whom the case has been tried both upon the legal points as well as the merits.

Judgment by Messrs. A Sconce and D. I. Money. The charge made in this case against the prisoner should have been stated with more precision, so as to indicate explicitly the nature and extent of the alterations which the prisoner is by the charge asserted to have made. In his defence, however, the prisoner makes a complete answer, and is shewn to have fully understood the character of the crime for which he was tried.

The subjects of the charge are two *challans*, or invoices transmitted by prisoner in the capacity of district dak moonshee of Ranaghat to the dak moonshee of the Magistrate's office at the Sudder Station. These *challans* bear now the dates of 4th and 5th October, and the answer of the prisoner is that these dates owing to press of business, were erroneously inserted by him; for instead of 4th, he should have written 5th, and instead of 5th he should have written 4th. That is on two successive days he mistook the date of despatch, in the one case post dating and in the other antedating the *challan*.

This then is the prisoner's explanation of one portion of the alteration: and he further says, with respect to the *challan* erroneously dated the 4th October instead of the 5th, that he had entered a *lefafa* or packet which is now missing, on the night of despatch, and in proof of that bonâ fide entry, he referred to the clearly written total of the entire number of packets (22) covered by the *challan*.

Such then is the forgery charged, that is, altering the dates of both *challans* and altering one *challan* by adding thereto a packet which it did not bear at the time of despatch.

The Sessions Judge has partially misunderstood the prisoner's defence. He says "there can be no doubt that the prisoner altered the dates of the *challans*: he does not deny it." This is a mistake. Prisoner does not admit the alteration of the *challans*. On the contrary, he states that the *challans* bear the dates now which they bore at the time of despatch but that in the hurry of writing, on both days, he wrote the wrong date.

Now as to the facts, it appears to us upon the strongest presumption, that the alterations of the original documents are proved to have been made by the prisoner. Both *challans* after

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despatch by prisoner were received by the moonshee at the Sudder Station, on successive days, that is on the 5th and 6th October; and this moonshee, recording his receipt of the packets despatched, on the face of each *challan*, returned the *challans* as vouchers to the prisoner. The first piece of evidence of alteration is the appearance of tampering with the figures. The *challan* of the 5th is plainly altered from the 4th, and that of the 4th has been adapted from the 5th.

Next, it appears to us to be extremely improbable that on two successive days, prisoner should have mistaken the date of despatch; and in an inverse manner, on one occasion using a date too soon, and in the next a date too late.

Further, we observe that the explanation now given by prisoner is an after-thought; for on being first called upon for an explanation as to the missing packet, in his report of the 21st October, he stated he had forwarded it on 4th October. He now says that it was despatched on the 5th; that is that the *challan* of the 5th was erroneously dated the 4th, again on a later occasion he returned this *challan* of the 4th to the Magistrate to prove his despatch of the packet on that date, and he is still silent as to the mistake made in the hurry of writing.

But the most material evidence is that connected with the subsequent addition of the entry of the missing packet. It is the lowest entry in the list: and the total of the packets despatched purports to be twenty-two.

But the Sudder Moonshee's receipt of 6th October, written on the face of the *challan* is for twenty-one packets only. This receipted *challan* was returned at once to the prisoner: and though it ackowledged that only twenty-one packets had come to hand, prisoner took no notice of the omission. Prisoner's silence affords strong presumption that the Sudder Moonshee had given an exact receipt for the whole packets originally sent namely twenty-one, and that the missing packet was subsequently added. Prisoner accounts for his silent acceptance of an incorrect receipt by saying that he did not notice the mistake. But the inference is we think inevitable that on the missing packet being traced to his office and no further, and on his being called upon to account for the loss, he so altered the *challan* as to make it appear that he had despatched it to the Sudder Moonshee, and that the responsibility for the loss, lay with the latter.

Finally, we have the Sudder Moonshee's evidence. Not only does this evidence satisfy us of the alterations made on the *challans*, after he had returned them receipted, to the prisoner: but the fact that they were restored to the prisoner's custody and the tenor of the receipts on different dates recorded, strongly corroborate the truth of the witness's evidence.

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It is said, however, by the pleader who appeared as counsel for the prisoner, that even supposing the facts charged to be proved, these facts do not constitute the crime of forgery.

In Clause 3, Section 4, Regulation II. of 1809 forgery is defined to be the fraudulent and injurious fabrication or alteration of written papers of whatever description. Here the alterations effected by the prisoner appear to be injurious as well as fraudulent. Forgery has been sometimes defined as the making of a false instrument with intent to deceive: and there can be no question that the alterations now charged were false and intended to deceive.

But they were more. They were in themselves injurious and were intended to be injurious. The *challans* were altered after they had been receipted by the Sudder Moonshee and the effect of the alteration was to represent, that though by the *challan* forwarded on the 5th October only twenty-one packets had been despatched to and receipted by the Sudder Moonshee, he must be held answerable for receiving twenty-two packets. The effect of the alteration was to convert the acknowledgment of receiving twenty-one packets, into an acknowledgment of receiving twenty-two and to make it obligatory on the Sudder Moonshee.

Two cases tried by this Court in 1856 have been quoted by the prisoner's counsel as a bar to a conviction in the present instance. The first is reported at page 303, part 2 of the cases for 1856. In this case the date of an official order made on a Nazir's *urzee* was the ground of the forgery charged; and it was held that the alteration of the date was not injurious. But the circumstances of the present case are of a different character. Again we are referred to the trial reported at page No. 931, of the same Volume when on a charge turning upon the forgery of a bail bond, it was held that injury to any one had not been found proved: but here also, the acquittal of a prisoner on a charge in which the forgery was not proved to be injurious cannot govern the issue of a trial on which injury is established and which injury throughout this trial, the prisoner has endeavoured to give effect to. The guilt of the prisoner, it appears to us, does not depend on the consequences of his forgery but on the forgery itself. His purpose was to cast the accountability for the missing packet on the Sudder Moonshee; and though that purpose has been frustrated, the crime of prisoner has been completed by his own acts.

We accordingly convict the prisoner of the crime of forgery; but it appears to us that the sentence imposed by the Sessions Judge should be modified. There is no evidence to show that prisoner had any object to gain by abstracting the missing packet; or that he for any purpose of his own did detain the packet.

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Under all the circumstances we sentence the prisoner to one year's imprisonment with labor from the date of his conviction by the Sessions Judge.

Remarks by Mr. D. I. Money, Officiating Judge.

Since the decisions of this Court, to which our attention has been called have been cited by the prisoner's pleader as *precedents* in his favor, and as barring the prisoner's conviction in the present case, I think it right to record my dissent from the principle which the finding in each case would *appear* to establish, viz. that in order to constitute the crime of forgery *an actual injury must have accrued*, inasmuch as I think that, *where the act is fraudulent* and *there is an intention to deceive*, it is sufficient if an *injury* is *likely to accrue* or any one *may be prejudiced* by it.

PRESENT:

A. SCONCE, ESQ., *Judge*, AND D. I. MONEY, ESQ., *Officiating Judge*.

GOVERNMENT

versus

SHEIKH CHUND.

Backergunge.

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The prisoner convicted of wilful murder and sentenced to suffer death, there being nothing in the evidence to show that he was not sane when he committed the act.

CRIME CHARGED.—Wilful murder of Musst. Dhungah.

Committing Officer.—Mr. H. A. R. Alexander, Magistrate of Backergunge.

Tried before Mr. F. B. Kemp, Sessions Judge of Backergunge, on the 24th March, 1858.

Remarks by the Sessions Judge.—The prisoner is arraigned on a charge of wilful murder, he pleads *not guilty*.

The verdict of the jury* finds the prisoner *guilty* of wilful murder on violent presumption.

The facts of the case are briefly as follows. Azim chowkeedar of the village of Chitkee in the jurisdiction of the *pharee* of Rajapoor, on the night of the 23rd of December, 1857, lodged a complaint to this effect, that on the same day, a near neighbour of his, Lohai, called to him, and informed him that the prisoner Chund who is the uterine brother of Lohai, had murdered his wife, having cut her throat with a *dao*. That the chowkeedar went to the house of Lohai, and found the prisoner sitting in the verandah of the northern house, and the corpse of the woman lying with the throat cut in the interior of the house; that the chowkeedar questioned the prisoner, who gave

* Two respectable vakeels of the civil Court of this district. Baboo Gopal Rai, Moonshee Tumeezoodeen.

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no answer; that Lohai informed the chowkeedar that the prisoner being enraged with his wife because she did not roast some rice as directed to do by the prisoner had cut her throat, the chowkeedar further stated that the *dao*, with which the murder had been committed, had been secured.

The police mohurrir held the inquest on the 24th of December. On the same date the answer of the prisoner was recorded by the mohurrir. The prisoner denied the crime, and stated that he was unable to say who had murdered the deceased, he admitted that the *dao* which was delivered to the police by Azim chowkeedar belonged to him. On the 25th of December the mohurrir submitted his final report.

In the Magistrate's Court the prisoner's defence was as follows: a denial of the crime, that his wife, the deceased, told him to go and cut the paddy crop, that the prisoner not going, the deceased quarrelled with him, and cut her own throat.

The Magistrate records the following reasons for committing the prisoner to take his trial on a charge of wilful murder. "The prisoner pleads *not guilty* and states that his wife cut her own throat, but this is a very improbable story and, in the face of the strong circumstantial evidence against the prisoner, cannot be credited. It appears that the prisoner killed the wife, the deceased, because the latter gave him abuse for not going to cut his paddy crop."

The principal witness in this case is Daoree, No. 5, the nephew of the prisoner. Daoree is aged about 13 years. Before examining him, I carefully questioned him and satisfied myself that he perfectly understood the nature and responsibility of the solemn affirmation made by him. This witness is a very intelligent lad and gave his evidence clearly and in the main point consistently. He deposes that one day he and his aunt the deceased, roasted some rice; that the witness took his portion of the rice and began to eat it in the verandah of the western house; that his aunt the deceased, took her portion and went into the northern house; that after about 2 *dunds* (say forty minutes) a noise "*oh ma*" arose, the witness ran to the northern house and saw the body of his murdered aunt lying, and the prisoner about four feet from the body with a *dao* in his hand; that the witness snatched the *dao* out of the hands of the prisoner; that in doing so the little finger of his left hand was slightly* wounded, that he went and gave the information to his father who was cutting paddy in the plain; that his father bringing the chowkeedar with him, came home and saw the corpse and apprehended the prisoner; that the chowkeedar asking for the *dao* the witness produced it from the western verandah where he had placed it;

* The mark as if of a cut by some sharp instrument is still distinctly visible on the little finger of the witness.

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that when the witness seized the *dao* the prisoner held it tight; that the prisoner bent forward a little in the struggle; that the witness kicked the prisoner on the chest and the prisoner let go the *dao;* that he, the witness, did not see or hear any dispute between the prisoner and the deceased; that the prisoner two months before the occurrence of the crime was sick with fever and "*bai;*" did no work but sat in the house; the witness recognizes the *dao* produced in Court, as belonging to the prisoner, and to be the *dao* which the witness took from the hands of the prisoner as above detailed; deposes that the mother of the witness was inside the western house when the crime was committed; that she came out on hearing the cries of the witness. The corpse of the deceased was lying face downwards. States that he did not depose before the Magistrate that the deceased told the prisoner to go and cut the paddy crop.

Mohamed Alhjun chowkeedar witness No. 1, deposes briefly as follows: that on the 9th of Pose last about 1 *prohur* of the day, the prisoner's brother Lohai witness No. 2, called me, and said, Come quickly, see, Chund has murdered his wife. The witness went to the prisoner's house and saw the corpse of Chund's wife lying in the northern house, with the throat cut, the prisoner was sitting near the door of the western house, the witness asked the prisoner why he had done such a deed, the prisoner made no answer, the chowkeedar bound the prisoner and made him and the corpse over to the charge of Suleem and Wazeer Mohamed chowkeedars, and proceeded with Lohai to lodge information at the *pharee.* The witness saw no weapon in the hand of the prisoner. On enquiry finding that Daoree the son of Lohai had snatched the *dao* from the hands of the prisoner the witness took the *dao* from Daoree, there were then marks of blood on the *dao;* saw no marks of blood on the clothes of the prisoner; there was much blood near the corpse; the brother of the prisoner on being asked told the witness that the deceased had told the prisoner to go and cut paddy; that the prisoner became angry and wounded the woman; the deceased was a young woman, without family and healthy; that she was chaste; that the house of the witness is about one hundred and fifty feet from the house of the prisoner a small *khal* intervening. Heard no dispute between the prisoner and his wife the deceased. Lohai and the prisoner reside in the same "*baree.*" Daoree brought the *dao* from the verandah of the western house. Never heard the prisoner and his wife, the deceased, dispute on any occasion. The prisoner used to talk like any other person. A few days before the crime he had fever, from that time he has become somewhat lazy. Recognises the prisoner and the *dao* produced in Court.

The witness Lohai No. 2, is the elder brother of the prisoner,

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he deposes briefly as follows. On the 9th of Pose, about 1 *prohur*, I was cutting paddy, my son Daoree came and told me that his aunt had been murdered and that he had taken the *dao* from his uncle's hands. Hearing this I ran hastily; called the chowkeedar, Mohamed Ahjun witness No. 1; went home; saw the corpse in the northern house and the prisoner sitting in the verandah; I and the chowkeedar questioned the prisoner; he gave no answer; Daoree produced a bloody *dao* from the verandah saying that he had snatched it from the hands of the prisoner. I heard that the prisoner asked the deceased for some roasted rice; that she would not give him any and he murdered her. The deceased was about twenty years of age; she had no family; she was healthy; her temper was somewhat passionate; the prisoner since last Badro, neglects his duties as a husbandman; the prisoner and the deceased used to quarrel now and then on this subject; the prisoner married the deceased two years ago; they lived together in the same house. From the time of his apprehension to the time he was sent in to the Magistrate, the prisoner made no communications on the subject of the crime. Daoree was wounded in the hand; can't remember in which hand. The deceased was chaste. The *dao* produced in Court belongs to the prisoner. About a year before the prisoner's marriage he was ill with "*bai;*" he recovered and married in Badro last; he was ill again of the same disease; the prisoner used merely to sit still; he did not speak to any body; Zaher is a very near neighbour of ours; the others live at some little distance.

The witness Musst. Rajoo No. 6, wife of the witness Lohai No. 2, deposes briefly as follows. On Wednesday the 9th of Pose, about 1 *prokur* of the day, I was in my western house; I heard a noise of "*oh ma*" proceeding from the northern house of the prisoner; I sent my step-son Daoree to that house; he went there and returned and told me that the deceased had been murdered. I went to that house peeped in, saw the corpse lying bleeding. I returned to my house; Daoree brought the *dao* from the hands of the prisoner and told all the people; I can't say why the prisoner murdered the deceased. I asked the prisoner at the time but he gave no answer. I did not hear any noise as of parties quarrelling before. I heard the sound of "*oh ma;*" "*oh ma*" was pronounced once. I never saw the prisoner and his wife quarrel particularly together beyond the disputes that are usual between husband and wife. The deceased was fifteen years of age; she had been married to the prisoner about eighteen months; she was chaste; she had no family; the prisoner is a good man. I cannot say why this misfortune* has happened to him; he had been sick with fever and "*bai*" from last year; he used to sit silent; he used

* The expression used by the witness, I can't say why his forehead has been burnt.

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sometimes to do the work of a husbandman, sometimes not; I did not see the struggle between Daoree and the prisoner for the *dao*. The corpse of the deceased was lying face downwards.

The witnesses named in the margin* live in the same village as the prisoner; depose that they went to the house of the prisoner on the day of the murder; saw the body of the deceased with the throat cut; questioned the prisoner who said nothing. The two witnesses remained in charge of the prisoner and the corpse while the witness No. 1, went to the police *pharee* to lodge information. Heard that the deceased had told the prisoner to go and cut paddy and that in a fit of anger he had murdered the deceased. Never heard any thing against the character of the deceased, the prisoner is a husbandman and well behaved. Never heard that the prisoner was ill, we are in the habit of meeting the prisoner; know him to be a well-behaved man.

* No. 7, Wazeer Mohomed, chowkeedar.
No. 8, Sulleem, chowkeedar.

The witness Zaher No. 9, a near neighbour of the prisoner deposes. On the 9th of last Pose, I heard Lohai weeping; went to his house; saw the corpse of the prisoner's wife lying in the northern house. On my asking, Lohai and Daoree said that the prisoner had murdered his wife. The prisoner was not ill; I am in the habit of seeing him constantly. For a few days before the murder he did not do the work of a husbandman. He used to sit idle. Never heard from any body that he was ill; the prisoner is a connection of mine by marriage; he did not tell me why he sat some days before the crime doing nothing.

The witness Jubaroollah No. 10, deposes: I heard from the witness No. 1, that the prisoner had murdered his wife; I went to the prisoner's house; I saw the prisoner tied; I asked the witness Daoree, he said, My aunt told the prisoner to go and cut paddy, therefore he murdered her; I did not see the corpse; I did not ask the prisoner any questions; I used to meet the prisoner at intervals of a day or two; never heard of his illness; my house is about 500 feet from the prisoners.

The medical officer Dr. Scanlan, had left the station when this trial came on, his deposition in the Magistrate's Court is as follows. "There was an incised wound on the right side of the neck which was three inches long and one deep, penetrating to the vertebræ. This wound divided the vessels and nerves on the right side of the neck and must have caused speedy death. It must have been inflicted by some sharp-cutting instrument such as a *dao*. The deceased by using her left hand might have inflicted the above wound on herself, but it is more probable that another party inflicted it on her, as considerable force was required to inflict so severe a wound."

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The evidence of the medical officer has been attested in this Court by the witnesses named in the margin.*

The witnesses to the mofussil inquest are named in the margin.†

A sketch of the lethal weapon which weighs 4 chittacks is submitted with the record.

* No. 11, Mr. Pereira.
„ 12, Gungachurn Doss.

† No. 3, Rajib Allee.
„ 4, Mohamed Kazim.

I have given a close and I believe faithful translation of the evidence taken in this Court. A careful consideration of this evidence has led me to the conclusion that there can be no reasonable doubt that the prisoner killed his wife. There is no evidence to prove that the prisoner was not in his right senses when he committed the crime, the averment that the prisoner was ill some time previous to the murder is made in this Court by the witnesses Nos. 1, 2, 5 and 6, of whom Nos. 2, 5 and 6, are near relations of the prisoner, but not in the Court of the Magistrate or before the police, and is contradicted by the evidence of two near neighbours of the prisoner, the witnesses Nos. 9 and 10, as also by the evidence of the two chowkeedar witnesses Nos. 7 and 8, who reside in the same village as the prisoner. The demeanour of the prisoner in this Court was sullen, but perfectly quiet and self-possessed, he is unquestionably sane. The prisoner has examined no witnesses to his defence, seeing no extenuating features in this case it is my duty to recommend that the prisoner be sentenced capitally.

The attention of the Magistrate will be called to the very unnecessary delay in committing this case. On referring to the record of this case in the Magistrate's Court, I find that this case was completed on the 6th of January, the Magistrate's commitment is dated the 20th March.

Remarks by the Nizamut Adawlut.—(Present : Messrs. A. Sconce and D. I. Money.)

Mr. A. SCONCE.—Prisoner is charged with the murder of his wife Dhunjah, a young woman of about twenty years of age to whom he had been married nearly two years. The evidence recorded at the trial is fully and accurately detailed in the Judge's letter.

Prisoner and his elder brother Lohai, lived in the same premises. On the morning of the murder, the 23rd December, 1857, Lohai had gone to work in the fields, leaving at home, his wife Rajoo, his son Daoree, a lad of thirteen or fourteen, the prisoner and his wife. The murder occurred about 8 A. M. At this time, the deceased Dhunjah was in a house situated on the north side of the premises; Rajoo and her son, in a house on the west side. Suddenly the cry of Dhunjah was heard, both by Rajoo and Daoree, *oh ma !* Daoree immediately went across to the north house; and in it he saw Dhunjah lying lifeless,

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and the prisoner Sheikh Chand standing close by, with a *dao* in his hand; the *dao*, Daoree, after a slight struggle, snatched from him. Dhunjah had received a deep gash in the right side of her neck, described by the medical officer as three inches long and one deep and which divided the vessels and nerves on the right side of the neck. Presently the deceased was seen by Rajoo, and at no long interval by Lohai, the chowkeedar Muhomud Ajeem and others.

There is the very strongest presumption, short of direct testimony, that the prisoner perpetrated the murder. Before the Magistrate, the prisoner said that Dhunjah killed herself, before the Sessions Judge, however, he said he knew not how she was killed, and he adduced no evidence: and his silence as to the self-slaughter of Dhunjah on the immediate discovery of his wife's death and in his first examination by the police *phareedar* shews that the intermediate statement has no foundation. There appears not to be the slightest ground for supposing that his nephew Daoree, his sister-in-law Rajoo, his brother Lohai or the other witnesses have manifested any purpose of bearing hard upon the prisoner by their depositions. By these witnesses the facts within their knowledge seem to be simply and truly told and we can come, I think, to no conclusion but that the prisoner is guilty of the charge. We have no explanation of the cause of the murder but that of momentary, unrestrained passion. To the Magistrate the lad Daoree said that he had heard Dhunjah taunt the prisoner for not going to cut the rice crop with others, and that he got angry and abused her. Daoree did not repeat this to the Sessions Judge, and indeed denied having made the statement to the Magistrate. Lohai says he heard, (but this necessarily is very indefinite) that the prisoner had murdered his wife because she refused to give him some baked rice. The prisoner would appear to have been sickly, and was out of sorts. He was averse to work. Illness may have depressed him: he was listless and silent; but no one considered him nor there is any reason for considering him insane.

I would convict the prisoner Sheikh Chand of the wilful murder of Musst. Dhunjah, and sentence him to suffer death.

MR. D. I. MONEY.—The facts of the case as established by the evidence on the record, are given at length and very correctly by the Sessions Judge.

It is impossible, upon the evidence, to come to any other conclusion, than that the prisoner was guilty of the wilful murder of his wife.

There is no ground whatever for the suicidal hypothesis, although the possibility of the suicide is admitted by the Civil Assistant Surgeon. The deceased was found, immediately after the murder, with her face upon the ground, in a pool of blood,

Now as the cause and the effect were simultaneous, the death ensuing upon the injury instantaneously, it is scarcely possible, if she took her own life by cutting the right side of her throat with her left hand, which is the only way the Civil Assistant Surgeon thinks the suicide could have been committed, that she should afterwards have turned herself over. Although, however, he admits the possibility, he is of opinion, that the fatal injury must have been caused by another hand, and the evidence, I think, indisputably proves, that none but the prisoner could have inflicted it. It is almost self-evident from the prisoner's own conduct, and the different answers he has given, when questioned upon the subject.

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The provocation is not apparent, but there is no reason for believing the prisoner not to have been of sane mind when he committed the act, beyond a moodiness of disposition or temper, to which he appears to have been subject previous to its commission, and subsequently on his trial.

As, therefore, there is no evidence to show, that he had not the power to resist the homicidal impulse, and as he gave way to it from ungoverned passion, I see no extenuating circumstances in the case, and concur in the conviction and the capital sentence.

PRESENT:

A. SCONCE, ESQ., *Judge*, AND D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT

versus

NEE POH.

Tenasserim.

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Case of NEE POH.

CRIME CHARGED.—Murder of Leetaw.

Committing Officer.—Lieut. J. C. Haughten, Officiating Deputy Commissioner of Tenasserim and Martaban Provinces.

Tried before Capt. H. Hopkinson, Officiating Commissioner of Tenasserim and Martaban Provinces on the 29th April, 1858.

Prisoner convicted of wilful murder, is under the circumstances of the case sentenced to be imprisoned in transportation for life.

Remarks by the Officiating Commissioner.—The parties in the case are Karens and live in a remote tract of the Tavoy district called Metu. They are of a people far more rude and barbarous than the Burmese. A people very shy and very timid, disliking nothing so much as intercourse with foreigners or to be called away from their villages and generally prompted by this feeling of dislike to conceal all crime that occurs among them, while they find a further motive for concealment, in the

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danger a member of their tribe runs from denouncing an offender whose punishment his relations would consider themselves bound to avenge on his accuser and those who assisted the latter.

I regret that I was unable to procure the attendance of the witness Nga Moo examined before the Magistrate, who had gone into the jungle, no one knew where; he is a Karen who has been converted to Christianity, and it was through his revelations that the murder of Leetaw came to the knowledge of the authorities, else doubtless it would have been concealed for the reasons I have given.

Mr. Cross, an American Missionary, who has resided for many years among the Karens, speaks their language, and has deservedly won their entire confidence, interpreted in the trial before the Magistrate, but he was unfortunately absent from Tavoy at the time of the Sessions trial, and I had to content myself with a Burman, who probably was not so well qualified as an interpreter and who, I could see, failed to inspire the witnesses with that confidence which enabled them to tell their story so freely and unreservedly, as they did to Mr. Cross, I had great difficulty in eliciting their evidence.

These explanations, I trust, will be carefully considered by the Court, they are absolutely essential to the right understanding of the case of which I will now proceed to give an account.

Wit. No. 4, Meebhoy Paw.
" " 5, Natchoo Boo.
" " 6, Nusa Kaya.

Some time about the beginning of last rains (the witnesses have no idea of precise divisions of time) the prisoner Nee Poh who had been recently discharged from jail, was in the house of his brother the deceased Leetaw, there had been a libation to the Nats there that morning at which the prisoner had assisted. The prisoner began harping upon the neglect shown him by the deceased while he was in jail, and, irritated by this imagined wrong or by the reply of the deceased to his allusions to it, he took down a cross-bow from the roof of the house and wrenching the bow from the heavy stock, struck the deceased several times over the head with the latter. The deceased died immediately, his daughters who interposed to shield their father from the prisoner's attack were also assaulted by him. The prisoner slept in the deceased's house the night following the murder and next day had the body burnt. The prisoner also burnt the bow stock with which he killed his brother. The

No. 7, witness for prosecution Nga Phyan.

headman of the village the witness Nga Phyan, who had been called by one of the deceased's daughters to come to her father's assistance, on entering the house found him lying on the point of death, blood was flowing from several wounds on his head

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and the skull was fractured to such an extent, that part of the brain could be seen. The prisoner said to the witness, "Don't you come, you have nothing to do with this business." The apprehension of the prisoner was only effected about a month and a half afterwards; it had been delayed through fear of him, and was then managed by stratagem; while this witness was in the house, the witness Nga Mai a son-in-law of the deceased came in from fishing, the deceased was quite dead then, with two wounds, one on each temple, and one at the back of the head, and blood flowing from them. The prisoner was sitting by the side of the deceased when Nga Mai returned to the house and he told Nga Mai afterwards that he had only killed the deceased in fun.

Wit. No. 3, Nga Mai.

Defence.—The prisoner says that he and deceased had been drinking, and that the deceased fell off from the verandah of his house on to the ground and was killed by the fall. The Thoogyee and the villagers regarding the prisoner as a bad man whom it would be desirable to get rid of, thought the opportunity a good one to accuse the prisoner of having killed the deceased and have trumped up this story.

Verdict of the Jury.—The Jury, after a few minutes consultation, returned a verdict of "*not guilty*" acting as they gave me to understand, under some notion that the law of evidence would not support a conviction founded principally on the testimony of the near relations of the deceased, but more probably influenced by a belief commonly entertained by Burmese that to save life, even the life of the greatest criminal, is always meritorious.

Opinion of Judge.—I have no doubt myself, however, of the guilt of the prisoner and that he committed the crime with which he is charged, and, thinking so, I beg to propose that the capital sentence I have pronounced against him be confirmed and carried into effect. The account given by the prisoner of the manner in which deceased came by his death is in itself any thing but probable, and if he had so died, that his family, his neighbours, the headman, all the village in fact, as the prisoner says, should have conspired to implicate an innocent man in his death is contrary to all experience of the Karens, I hold the prisoner to have committed, without any extenuating circumstances, a most cruel and barbarous murder.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Sconce and D. I. Money.) We concur with the Commissioner that it is proved in this case that the prisoner Nee Poh felled his brother, the deceased Leetaw, with the stock of a cross-bow and so murdered him.

The murder appears to us to have been perpetrated in the excitement of a drunken brawl.

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The proceedings in both the Lower Courts are carefully recorded and reported. It is stated, however, by the Commissioner that he was aided by a less efficient interpreter of the Karen language than the Missionary whose services the committing officer had the benefit of; and for the elucidation of the circumstances attending the murder, it is necessary to consider the depositions recorded by the Commissioner as illustrated and to some extent modified, by those delivered before the Deputy Commissioner.

In either Court no distinct or known motive is assigned for the murder. In March 1856, the prisoner had been convicted of theft with violence and was sentenced to one year's imprisonment. About two months after his release on a day, not exactly known, this murder occurred. It is said that the prisoner this day had expressed some dissatisfaction because the deceased had neglected his wife or perhaps himself, during the time he was in jail. But the widow of the deceased Mee Bhoy who is one of the principal witnesses, spoke very doubtingly on this point and in her deposition before the Magistrate, which in other respects is full and indicates no leaning towards the prisoner, she said she never heard any conversation between her husband and prisoner on the subject. We think, therefore, that it is not proved that any malice on the part of the prisoner can be ascribed to the matter now referred to, and it seems to us improbable that if any ill-will existed, it should not have broken out till two months after the prisoner had been released from jail.

On the forenoon of the fatal occurrence, at the house of the deceased, was held an entertainment described by the Commissioner as a "libation to the Nats," the object being, as stated to the Deputy Commissioner by Nga Mai, son-in-law of the deceased, to invoke their blessing and assistance. The party consisted of the prisoner, the deceased, Nga Mai and two others. They ate and consumed nearly two bottles of not strong spirit. Of such spirit, it was said by one witness, that a man could take two bottles; while one of the daughters of the deceased, with a simplicity and peculiarity of manners to which we are not accustomed, said she herself could drink one bottle. Almost all the witnesses agree that the prisoner was not intoxicated; one Nieprew says he was not very drunk, only a little.

But it seems to us that the condition of the prisoner is more exactly indicated by the events that passed previous to the murder than by the idea communicable to us by the statements of the witnesses as to the effects of the previous revelry. Before the Deputy Commissioner Mee Bhoy, wife of deceased, said that while her husband was sitting at the east end of the verandah and was about to rise after eating, the prisoner shoved him and he fell down off the verandah, which was high as a

man's forehead from the ground. The deceased was not hurt by this fall. No explanation is given of the character of this act of violence, but it seems to have been done in a wild frolic. Again about the same time, as appears from the depositions of Mee Bhoy and her daughters, Natchaboo and Nasa Kaya, before the Deputy Commissioner, the prisoner going out with a bottle in his hand, stumbled at the doorway, fell and cut his hand with the broken bottle. He came back to the girls to have the blood staunched. Natchaboo said, "I took a piece of cloth and tied up his hand: at the same time he had the stick of the bow on which he sat, with him," while her sister stated, "After prisoner had stopped the blood, he made an angry noise and took down the cross-bow." So according to Mee Bhoy, prisoner hurt his hand by the fall shortly before he attacked her husband. Thus it appears to us that with whatever momentary feeling the attack may have been influenced, it did not arise from a sense of premeditated injury. Not long before prisoner cast his brother out of the verandah; next going out, we know not where, "in holding a bottle with spirit in it," he fell and cut his hand: then after he returned and got his niece to tie up his wound, he is described (apparently) as immediately attacking her father.

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Prisoner's statement, unsupported by evidence, is that the deceased died of a fall from the verandah.

Upon the whole it seems to us that the evidence in this case does not disclose facts of that high degree of aggravation which calls for the extremest penalty of the law; and that the proper sentence to be imposed on the prisoner is imprisonment in transportation beyond sea for life.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT

versus

SOOKOOR MAHOMED.

Sylhet.

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Case of SOOKOOR MAHOMED.

The appeal of the prisoner was rejected

CRIME CHARGED.—Culpable homicide of Musst. Tera Beebee who was at an age unfit for sexual intercourse and was wounded from the effects of violence used in a forcible violation of her person by her husband.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. J. C. Dodgson, Officiating Magistrate of Sylhet.

Tried before Mr. M. Shawe, Sessions Judge of Sylhet, on the 2nd March, 1858.

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the Court considering the charge fully substantiated and the sentence passed by the Sessions Judge lenient. With reference to the probable frequency of the crime the Court was of opinion, that some restriction might be imposed by legislative enactment upon the parent, to prevent his delivering over his child to a husband's custody and the rites of marriage, before she is fit for there consummation.

Remarks by the Sessions Judge.—The prisoner Sookoor Mahomed had forcible connection with his wife Musst. Tera Beebee, aged about twelve years, who had barely attained the age of puberty and caused death thereby. The prisoner confessed before the police and the Magistrate, pleading ***not guilty*** before me, but making no defence. The only similar case, I could find to guide me as to the extent of punishment, was that of Jebun Kybert, convicted and sentenced by the then Sessions Judge of Sylhet on the 23rd of January, 1850, and whose decision I have taken as a precedent.

Sentence passed by the lower Court.—To be imprisoned without irons for (2) two years from this date and to pay a fine of Rs. 25, on or before the 15th instant, or in default of payment to labor until the fine be paid, or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) This case is similar to the case tried by this Court on the 20th January 1858, and reported in the Nizamut Adawlut Reports for that month page 5, though not attended perhaps with so much ruffian violence. There the wife too was of more tender age, almost a child.

In a similar case of Bawool Saha tried by this Court on the 4th October, 1843, (see Nizamut Adawlut Reports) the opinion of the Mahomedan law officer was called for before sentence was passed. He declared that the offence was punishable under the Mahomedan law, provided the husband had not previously had actual connexion with his wife, and the Court sentenced the prisoner to fourteen years' imprisonment with hard labor.

Dr. Chevers, in his able work upon medical jurisprudence, has a note upon this case, see page 482, where he states that "from this and many other facts, it is evident that the ancient law-givers of this country, in providing for the early marriage of females, were careful to protect them against too early cohabitation. The practice of sending immature children to their husband's houses, which at present obtains, is evidently as much an infraction of the law of the land, as it is a violation of the law of nature."

It is impossible to doubt but that such cases must often occur, although the marital right may throw a shield over them, and prevent disclosure or discovery.

It is one of the consequences of the pernicious system of early marriages, which when followed by early cohabitation is, as Dr. Chevers justly remarks, opposed as much to the law of the land as to the law of nature.

Whatever may be the popular opinion on this subject, the unnatural practice has not the sanction of law, and some restriction might be imposed by legislative enactment upon the parent to prevent his surrendering his child at too early an

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age to, what can only be called, the prostitution of marriage. I do not see by what right a girl of tender years is to be delivered over to a husband's custody and the rites of marriage, before she is fit for their consummation. In the present case although the deceased is said by the witnesses to have been eleven or twelve years old, and had nearly attained the age of puberty, there is not only the cruel violence of the act, from which death ensued, but the medical evidence shows that the unfortunate victim was for some time previously subjected to unnatural practices.

The prisoner in his appeal pleads, that there was no disagreement between himself and his wife, that he had no intention to take her life, that she died by the will of God, and that the Law Officer ought, under the provisions of Regulation IX. of 1793 and Regulation IV. of 1797, to have been made an assessor.

I see no grounds for interference with the lenient sentence passed upon the prisoner and reject the appeal.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT AND SHEEBCHUNDER DEY

versus

TAREENEECHURN SEIN.

Dacca. 1858. May 31. Case of TAREENEECHURN SEIN.

CRIME CHARGED.—Obtaining money under false pretences.

Committing Officer.—Mr. R. B. Chapman, Joint-Magistrate of Fureedpore.

Tried before Mr. R. Abercrombie, Sessions Judge of Dacca, on the 31st March, 1858.

Remarks by the Sessions Judge.—The circumstances connected with this case are as follows.

The Court finding that the prisoner assumed a false character in giving himself out to be the uncle of the adopted child, and made a false representation regarding him, both as to his family and caste, which imposed upon the wi-

Ranee Gunga being a widow and childless, was desirous of adopting a son, Tareeneechurn Sein, prisoner No. 1, was introduced to her, as a person who could provide her with the object of her desire. He offered her his nephew, a child of two and half years old, whose mother was willing to part with him. Arrangements were made between the parties, the Ranee agreeing to pay the sum of 1500 Rupees for the child. The bargain being concluded, the money was paid to prisoner No. 1, and the boy made over. About a year afterwards it was discovered that the child was not the nephew of the prisoner, but the son of one Rajnarain Sing, a *soodra*, who came forward and claimed him. The boy being of inferior caste to the Ranee, who is a *boyd*, she considered herself to have been deceived by the prisoner, it being neither customary nor lawful to adopt a child of inferior

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Case of TAREENEECHURN SEIN.

dow, and induced her to give ready credit to his representation, and to pay him the money as the price of the adoption, convicted him of the charge, and sentenced him to three years' imprisonment with labor commutable to a fine of 100 Rupees.

caste. That prisoner No. 1, introduced the child as his nephew and made him over to the Ranee to be adopted as her son, receiving a sum of money in consideration thereof, is proved beyond a doubt. The charge therefore of having obtained money under false pretences may be said to be clearly brought home to him.

In his defence he urges, that the case has been got up against him from enmity. He also pleads an *alibi* which is not established by his witnesses.

Of the other two* prisoners' guilt there is no proof, the evidence does not show that they took any part in the transaction, moreover their names were not mentioned by the prosecutor in his original petition nor in his first deposition before the Magistrate.

* Goluckchunder Ghose, Kallynath Ghose.

The Jury who sat with me upon the trial, convict the prisoner Tareeneechurn Sein but acquit the other two. I concur in their verdict.

The crime of which the prisoner has been found guilty by myself and the Jury not being one which I am specifically empowered to punish by the Regulations, the case will be referred to the Nizamut Adawlut agreeably to Section 4, Regulation VI. of 1832. Taking all the circumstances into consideration, I could recommend that a sentence of three (3) years' imprisonment with labor commutable to a fine of 100 Rupees be passed upon the prisoner Tareeneechurn Sein.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The particulars of the case are correctly stated by the Sessions Judge. There is no doubt that the prisoner assumed a false character in giving himself out to be the uncle of the child, and made a false representation regarding the boy both as to his family and his caste, which imposed upon the widow, and induced her to give ready credit to his representation, and to pay him the money as the price of the adoption. I sentence the prisoner, as recommended by the Sessions Judge, to three years' imprisonment with labor commutable to a fine of 100 Rupees.

SUMMARY CASES.

MAY,

1858.

SUMMARY CASES.
MAY 1858.

PRESENT:
D. I. MONEY, ESQ., *Officiating Judge.*

No. 28 OF 1858.
GOVERNMENT
versus
HATOOR SIRDAR,—PETITIONER.

VAKEELS OF PETITIONER,
MR. J. W. B. MONEY AND BABOO SREENATH DOSS.
VAKEEL OF GOVERNMENT, BABOO SHUMBHOO-NATH PUNDIT.

Assam.
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May 12.
Case of HATOOR SIRDAR.

Application for a review of judgment granted under the circumstances of the case, and the lower Court directed to make further enquiry, and examine the witnesses named by the prisoner. The Court held, in concurrence with the permanent Judges, that the latter part of Section 4, Regulation XIV. of 1810

This is an application for a review of judgment in the case of Hatoor Sirdar, who was convicted by the Deputy Commissioner of Assam of an affray with culpable homicide, and sentenced to seven years' imprisonment with labor and irons. The sentence on the appeal of the prisoner was confirmed by this Court on the 2nd of February last.

The review is applied for by the prisoner's Counsel on the ground, that the evidence of several material witnesses for the defence, especially named by the prisoner, was not taken in the lower Court, and that if it had been taken, it would have established the plea of *alibi*, which he puts in, and have proved his innocence, and that consequently he had not a fair trial.

When the sentence passed by a lower Court upon a prisoner is confirmed in appeal by this Court, or when this Court passes sentence upon a prisoner in a trial referred by a lower Court, such sentence is final, and there seems a doubt whether the Nizamut Adawlut has an inherent power to revise or alter it. The law which gave it that power, viz. Section 4, Regulation XIV. of 1820, would appear to have been superseded, and the Court can only find one precedent, viz. the case of Choonee, Nizamut Adawlut Reports, 27th August, 1833, in which it was ruled that a Judge of the Court of Nizamut Adawlut was competent to revise and modify an order passed by himself, without interference of another Judge.

Applications for reviews of judgment in criminal trials have been on several occasions heard by the Court and rejected. But

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inasmuch as the great object of every trial is to punish the guilty and acquit the innocent, although to alter its own conviction and sentence in a criminal trial should be beyond the competency of the Nizamut Adawlut, still whenever fresh matter may be disclosed, or good grounds shewn for further enquiry or evidence, as likely to prove that the prisoner was not guilty, the Court will not, for the ends of justice, withhold the exercise of the discretion, which they undoubtedly possess, in directing such further investigation to be made, as may be necessary, and, should the result establish the innocence of the prisoner, in bringing the whole case to the notice of the Government, whose prerogative it is to grant a pardon.

which gave the Nizamut Adawlut the power of revising any sentence it had passed and remitting any part of the punishment adjudged was not superseded by Acts XXXI. of 1841 and XIX. of 1848, those Acts having reference only to the revision of sentences of a *lower* by a higher Court.

Such cases, however, in which the sentence of the lower Court has been confirmed by the Court in appeal, would be very rare and exceptional, inasmuch as the evidence upon the first appeal to which only of right the prisoner is entitled, is always carefully examined, and the prisoner may have, if he desires it, the benefit of Counsel. It would be a dangerous precedent, and inconsistent with the object of a high appellate Court, and the requirements of justice, to allow further proceedings, which to some extent constitute a retrial, except upon the most urgent grounds. Does the present case afford such grounds?

There was the clear and distinct evidence of *twelve eye-witnesses*, who all state on oath that they saw the prisoner strike the deceased. One of them, Jameerodin, witness No. 2, after seeing him strike the deceased, was himself wounded by one *Noro Pyke.*

The prisoner's defence was, that instead of his committing an affray with the dependants of the Baharbund zemindar on the *15th Magh*, and assaulting and wounding *Kanoo*, the dependants of the zemindar of Jamerah seized three men in the service of the Baharbund zamindar on the *14th Magh*, and that of these three, Natha, Atha and *Kabil*, the last named was beaten by them and died of the injuries he received.

This is a defence so diametrically opposed to the facts sworn to by the twelve eye-witnesses, that it is scarcely possible to conceive, how any difficulty could have existed in proving either *it* or the evidence for the prosecution to be totally false.

The Deputy Commissioner in his proceedings gives the following as part of the prisoner's *defence.* "This crime (affray with the murder of Kanoo and wounding of Jameerodin and Janoo) was not committed on the 15th Magh, but on the previous date, the 14th Magh. The people of the zemindary of Jamerah seized three persons belonging to the Baharbund zemindary. Their names were Natha, Atha and Kabil. The latter of the three they murdered, and have falsely brought this case against me changing the name of the deceased to Kanoo."

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The Court cannot find from what part of the prisoner's answer this extract is taken. It may be on the record, for three of the witnesses named by the prisoner and examined on his behalf, viz. Kabil No. 1, Batool No. 3, and Bolie No. 4, confirm the statement.

The counter-charge certainly appears in the *petition* preferred by the prisoner, when he first presented himself in the Magistrate's Court, after, for a long period, evading arrest.

Another part of the prisoner's defence was, that *Noro Pyke* who was charged also with committing the affray and wounding Jameerodin, had *died* in the previous month on the 10th Poos. This too some of his witnesses assert.

Out of thirteen witnesses, named by the prisoner in his defence, seven were examined by the Magistrate.

The prisoner had stated, that on the 15*th Magh* he was at the Nagasunee thannah in company with Anundo Mohun Darogah and others of the police, who were instituting enquiries into the occurrence of the 14*th Magh*.

The Jury, in consequence of the *alibi* pleaded by the prisoner being established by the seven witnesses examined, found him *not guilty*.

The Magistrate gave the following opinion. "I would convict him, as I consider the evidence brought forward in support of the *alibi* entirely fails to dishonour the strong and conclusive testimony adduced as to his having been present at the affray, and that it was by his hand the deceased received the blow on the head, which there is every reason to suppose proved fatal."

The Deputy Commissioner convicted the prisoner of the charge brought against him, upon the following grounds.

"The evidence adduced for the prosecution in this case does not, in my mind, admit of any doubt of the prisoner's guilt. The evidence brought forward by the prisoner in his defence to prove that *Noro Pyke* died of cholera in Poos is proved to be false, for Noro has now been apprehended and will receive sentence for the crime in a separate trial. The plea of *alibi* and spite is unworthy of any credence."

The Court in weighing the whole evidence in appeal took the same view as the Deputy Commissioner, and confirmed the sentence he had passed upon the prisoner.

Since then the trial of *Noro Pyke* has taken place, and the following judgment was passed by the Court upon his appeal.

"The appeal of the prisoner has been conducted by his pleader, Baboo Sreenath Doss. He has taken up two grounds of objection to the trial and sentence of the lower Court. First, that the Deputy Commissioner depended on evidence recorded on a former trial, on which another prisoner had been

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convicted and that only four of the witnesses who had deposed on that trial were examined as to the identification of the prisoner before the Court and secondly, that witnesses named by the prisoner were not examined in his defence.

"It has been urged by the prisoner's pleader, that, on both these grounds, the prisoner has not had a fair trial, and that the proceedings of the lower Court should be quashed, and he cites as a precedent the decision of this Court of the 9th December, 1835, in the case of Dhora and others, Select Reports, Volume V. page 17.

"On examining the evidence for the prosecution, it appears to the Court to be clearly open to the objection urged. The mere fact of identification is not sufficient. The Court concur in the opinion expressed by the Nizamut Adawlut in the case above cited, and think that the evidence to the facts of the case should have been taken *de novo* in the presence of the prisoner, and that it is not sufficient to proceed upon the record of the former trial, being satisfied simply with the identification of the prisoner by some of the witnesses, who had been previously examined.

"If the Deputy Commissioner did not think it necessary to take the evidence *de novo* of all the witnesses who had been previously examined, as to the facts of the case, the witnesses who were called should have been questioned regarding the evidence they had formerly given. It should have been read to them in the presence of the prisoner, who should have had an opportunity of cross-examining them upon it.

"The witnesses named by the prisoner, in his defence should also have been summoned and examined. The omission to take their evidence made it almost an *ex parte* case for the prosecution.

"In the former trial moreover, it was stated by some of the witnesses for the defence, that Noro Pyke was dead. Were there two individuals of the same name? This point also should have been cleared up.

"Under these circumstances the proceedings of the lower Court are quashed,and they will be directed to proceed to the trial of the prisoners *de novo*, taking such evidence for the prosecution and for the defence as they may, with reference to the above remarks, consider necessary, and the ends of justice may require."

Now, as it was necessary, upon the grounds stated by the Court, to remand the case of Noro Pyke to the lower Court for retrial, and as it has been strongly urged by the prisoner's counsel, that the evidence of Anundomohun Darogah and others of the police, named by him, would put beyond a doubt one way or the other, the pleas set up by the prisoner, and as the Court observe, that he continually petitioned that their evidence

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might be taken, and as in his appeal he stated, though not by name and so expressly as is now urged, that "the material witnesses had not been examined" there does not appear to be, under the circumstances, any objection to direct the lower Court to make further enquiry and examine the witnesses named by the prisoner. There must have been a fearful mass of perjury on the one side or the other, and it will promote the ends of justice if the guilty are brought to condign punishment.

The Deputy Commissioner will therefore adopt the course suggested, and report the result with such remarks as he may wish to offer.

Whether the ruling of the Court in the case of Choonee of the 27th August, 1833, is a correct ruling or not, whether the power vested in the Nizamut Adawlut by the latter part of Section 4, Regulation XIV. of 1810, of revising a sentence passed by that Court and remitting any part of the punishment adjudged, has been taken away by Acts XXXI. of 1841, and XIX. of 1848, those Acts having reference only, it would seem, to the revision of the sentences of a *lower* by a *higher* Court, and whether therefore upon the receipt of the Deputy Commissioner's report after taking further evidence, it will be within my competency, should justice require it, to modify or alter the sentence which was confirmed in appeal, or whether, the case must be submitted to Government, is an important question with reference to the powers of the Court under the authority of the law, which will be submitted to the other Judges, with a request, that it may be fully argued and determined before the whole Court.

D. I. MONEY,
27th April, 1858.

Note by Mr. D. I. Money.—On looking more closely at the provisions of Sections 4, Regulation XIV. of 1810, it appeared to me, that there was an error in the marginal note annexed to it in Clarke's printed Regulations 3 Volumes, which declared the Section to be superseded by Acts XXXI. of 1841 and XIX. of 1848, and in submitting the case to the permanent Judges, with the view of its being brought for argument and decision before the Court at large, the question was submitted, whether the power, vested in the Nizamut Adawlut by the *latter* part of Section 4, Regulation XIV. of 1810, of revising a sentence passed by the Court and remitting any part of the punishment adjudged, had been taken away by Acts XXXI. of 1841 and XIX. of 1848, inasmuch as those acts appeared to have reference only to the revision of sentences of a *lower* by a *higher* Court.

The permanent Judges upon this reference were unanimously of opinion that the latter part of Section 4, Regulation XIV. of

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1810 was not superseded by Acts XXXI. of 1841 and XIX. of 1848. I fully concur with them in this conclusion, and as the Register has brought to my notice other cases, as per margin, in which the Court has exercised the power vested in them by Section 4, Regulation XIV. of 1810, I think there can be no doubt that the Nizamut Adawlut can revise and alter any sentence it has passed, whenever it may seem to them fit, or the ends of justice may require it.

1 Case of Gopeenath Burrooah, 30th September, 1848.
2 do. of Soobul Cheereema and others, 27th July 1844.,
3 do. Shewpershaud Tennur, 9th May, 1846.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

No. 25 OF 1858.

AZEEM MALITHA AND OTHERS,—PETITIONERS.

VAKEEL OF PETITIONERS,—BABOO HURKALEE GHOSE.

24-Perghs. *Note by Mr. Money, dated 4th May,* 1858.

1858. May 17. Case of AZEEM MALITHA and others.

The Court considered the orders of the Assistant Magistrate, sentencing the prisoners to punishment for a malicious complaint, without taking their defence, irregular and reversed them, directing him according to the circular recently issued by the

This is a case in which the petitioners have been punished by the Assistant Magistrate of Nuddea for a malicious complaint without their defence being taken.

An appeal was preferred to the Sessions Judge, who rejected it on the ground that it was ruled in a decision of this Court* page 300, Nizamut Adawlut Report Vol. VI. part II. that before punishing for a false complaint a reply is not always requisite. From this order of the Sessions Judge the petitioners now appeal to this Court, and the same plea is urged, that they should have been put upon their defence, before any sentence of punishment was passed upon them.

* Present: Messrs. B. J. Colvin and J. H. Patton.

In an appeal preferred to this Court upon similar grounds I considered the Magistrate's order illegal and reversed it. See summary cases, Nizamut Adawlut, for December 1857, page 505.

Mr. Fergusson, the Magistrate of Alipore, made a reference through the Sessions Judge of the 24-Pergunnahs to this Court, requesting to be informed whether my ruling should be held to supersede the resolution of the Nizamut Adawlut conveyed to the Judge of Behar in their letter of the 21st May, 1851, which was as follows.

"That they do not consider it to be strictly indispensable to take a defence from a party before sentencing him for a false and malicious charge, as the proceedings connected with the charge contain the proof of its being false and malicious, and it is upon them that his summary conviction is by law permitted. The Court however think that the party accused of bringing such a charge should be allowed before being sentenced, the opportunity of making any statement by which he might desire to remove the impression of the false and malicious nature of the charge arising out of the proceedings, *the absence of this statement does not however vitiate his conviction and sentence.*"

The Court sent the following reply to Mr. Fergusson's reference.

"That the Court are of opinion from the wording of the law, that any formal trial of a complainant for a wilful and malicious charge is not contemplated, and that the conviction and sentence passed without formally taking the complainant's defence was not *illegal.* They see no reason therefore to depart from the view promulgated in their letter to the Judge of Behar No. 428 of the 21st May, 1851, and adhere to the same."

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Court, No. 4, of the 14th May, 1858, & to be invariably observed, to allow the petitioners the opportunity of recording any statement they may wish to make upon the charge found against them.

As the same point is now again before me, and as I consider it one of very great importance, involving, in my opinion, the very first principles of law and justice, I shall submit it, before I deliver judgment, for the mature consideration of the Court at large.

I am impressed with the necessity of adopting this course, because I have, for so many years, maintained and acted always under the full conviction, that it was consonant with the requirements of the law, and the dictates of justice, that a defence, or some kind of answer, should be taken from a plaintiff, whose plaint, from subsequent proceedings, may be held to be malicious, before he was sentenced to punishment, and because one of the Judges, Mr. Torrens, differed entirely from his colleagues in the reply that was sent to Mr. Fergusson's reference, and another, Mr. Sconce, was strongly of opinion that some kind of statement should be taken from the prosecutor.

I cannot do better than repeat here the remarks I offered for the consideration of the other Judges, before that reply was sent.

"When I gave my decision in the miscellaneous case referred to, I was not aware of the opinion of the Court upon the point in question, which, although not passed in a regular or summary case before them, but on a reference from the Magistrate of Behar, must be considered a judicial ruling for the guidance of the lower Courts, and as such should be adhered to in all cases in which the same point may be raised.

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"Had I been aware of this opinion, I should certainly upon its authority, and from respect to the Judges who passed it, even if I did not altogether concur in it, have given a different decision in the case referred to.

"I have always considered and acted on the conviction, that a sentence of imprisonment upon a prosecutor, for making a false or malicious complaint, without hearing from him any thing in his defence, was an illegal sentence.

"I am aware of the arguments that may be adduced in favor of such summary proceedings, and it is possible they may have the sanction of the law, and if my colleagues are unanimous on the point, I shall be ready to subscribe to their opinion.

"This however would only affect the question as to the *legality* of the conviction and sentence, where no defence of any kind has been taken from the prosecutor.

"But I do not think, that such summary proceedings, where the prosecutor is not allowed an opportunity of explaining any part of the evidence that has suddenly converted him into a defendant, or stating any thing in his defence, if not *illegal* with reference to the *strict letter of the law*, are *irregular*, because inconsistent with the high principles upon which we should all of us wish to administer pure justice in this country.

"Many cases might occur, in which a summary conviction and sentence, without giving the prosecutor a chance, would be gross injustice. If we rule that the summary process so strongly advocated by most Magistrates is the law in its strict sense, and, where it is adopted, there is no appeal, we throw every prosecutor upon the malice and ingenuity of his opponent, and on the accidental mercy of the criminal Court.

"It is useless to offer examples. The argument requires no illustration. A poor man may come into Court with a real grievance, and fortified, as he conceives, with good evidence to support it. The richer adversary bribes his witnesses, and gets him committed to jail. There are numberless ways, in which a subtle defendant with greater influence may crush the prosecutor by the help of this summary process.

"In all such cases it would be simple justice to allow the prosecutor to make any statement he likes. It is possible that such a statement may lead to the exposure of the means that have been employed against him, and save him from unmerited punishment and disgrace. As to the *record* it may make the difference of a sheet of paper, as to *time* the difference of a quarter of an hour. It is not necessary that the Magistrate should send for additional evidence, unless he thinks proper. I would leave this entirely to his discretion. I only think *in every* case, for the sake of justice, where it may be proved, or it may appear to the Magistrate, that the complaint is malicious or vexatious, the prosecutor should be asked what he has

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to say in his defence, and that where such a course is not pursued, the omission of it should be considered an *irregularity* which would render the Magistrate's sentence liable to reversal in appeal. The suggestion I offer is not opposed, it appears to me, to the opinion expressed by the Court, on the 21st May, 1851. Although they decide that the absence of such a statement would not vitiate the conviction and sentence, they hold at the same time, that the party accused of bringing a malicious charge *should be allowed before being sentenced, the opportunity of making any statement, by which he might desire to remove the impression of the false and malicious nature of the charge arising out of the proceedings.* The subject is one of great importance and I shall be glad of the opinion of the other Judges upon it."

Holding still these views and for the reasons given, I refer the point for consideration of the Court *at large* that it may be determined after full argument heard upon it.

The question has never been argued before the Court, and the resolution referred to by Mr. Fergusson was passed by the Judges in consultation.

The Court consisting of the permanent Judges upon receipt of this reference issued the following Circular No. 4, dated the 14th May, 1858.

"The Court have, in two cases recently before them, had to "consider the propriety of punishment of prosecutors for false "and malicious complaint without first taking their defence.

"On a former occasion upon a reference by the Judge of Behar, "it was held by a full Court (May 21st, 1857,) that "it is not "strictly indispensible to take a defence from a party before "sentencing him for a false and malicious charge, as the proceed-"ings connected with the charge contain the proof of its being "false and malicious and it is upon them, that his summary con-"viction is by law permitted. It was however added, that "the Court think, that the party accused of bringing such a "charge should be allowed, before being sentenced, the opportuni-"ty of making any statement, by which he might desire to re-"move the impression of the false and malicious nature of the "charge, arising out of the proceedings.' The absence, however, "of this statement does not vitiate his conviction and sentence."

"Upon a more recent reference by the Judge of the 24-Per-"gunnahs, the Court held (March 15th, 1858,) the opinion that "from the wording of the law, any formal trial of a complainant "for a wilfully false and malicious charge, is not contemplated, "and conviction and sentence passed, without formally taking "the complainant's defence, is not legal, but they see no reason "to depart from the view laid down in 1851."

"Accordingly the Court request that you will, in all such

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"cases before passing sentence, invariably allow the prisoner the "opportunity of recording any statement he may wish to "make upon the charge found against him."

Further note by Mr. Money dated 17th May, 1858.

Although the permanent Judges have not permitted the question, of punishing prosecutors without defence for false complaint, to be brought, as I requested, before the Court at large, the Circular to which they have agreed, and which they have sent for my information in some measure meets the evil of which I complain. It matters not, I think, whether it is a mere statement or a formal defence. I could wish for the ends of justice it was the latter, but the prosecutor is to some extent protected, if it becomes an *invariable* practice that he should be allowed to say *something*, whatever that may be called, in explanation, before he is punished, and although the Judges have not ruled that the omission to take such a statement will render the Magistrate's proceedings *irregular*, and therefore in special appeal liable to reversal, still I cannot but view such an omission in that light, and I therefore, in the case before me, reverse the orders of the lower Courts, and direct that, according to the rule now laid down and to be invariably observed, the Assistant Magistrate will allow the petitioners the opportunity of recording any statement they may wish to make upon the charge found against them.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

No. 29 OF 1858.

GOVERNMENT

versus

DHURRUM DOSS,—PETITIONER.

VAKEEL OF PETITIONER,—MR. R. T. ALLAN.

VAKEEL OF GOVERNMENT—BABOO SUMBOONATH PUNDIT.

24-Perghs. 1858. May 29.

CHARGE.—Blocking public road.

The abstract grounds of appeal are as follows.

1st. From the papers on the record it will be observed that the road under dispute has not been proved to be a public thoroughfare. Consequently it is very improper to try the case under the requirements of Act XXI. of 1841.

Petition rejected, the Court hold-

2nd. Agreeably to the provisions of Section 2 of the said Act, no notice had been served on me, consequently I had no

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opportunity to appoint *punchayet*. Hence the order passed by the Sessions Judge is inconsistent with justice.

3rd. From the report furnished by the Darogah, it has been proved that the disputed road is not a public one. It has also been fully established that there is another road adapted for general use ; under such circumstances, the order of the Judge, is illegal.

ing, that inasmuch as the lower Court found that the disputed road was a public thoroughfare, Act XXI. of 1841 was applicable, and that with reference to the precedent in Dalrymple's case and other precedents, no appeal could lie to the Nizamut Adawlut under Section 2, Act XXXI. of 1841.

Mr. Allan, on behalf of the petitioner, has urged that the Sessions Judge has *misconstrued* the report of the Darogah, upon which his decision is chiefly grounded, that Act XXI. of 1841, under the provisions of which this case was tried, has reference only to a *public* road, or thoroughfare, whereas the Darogah's report and the facts of the case show, that the road in dispute is a *private* road, that under the 2nd Section of the Act no notice or injunction was served on the parties, and that there was no proof of either the health or comfort of the *public* having been inconvenienced and that consequently the orders of the lower Courts are not according to law, and should be reversed.

The lower Court found from the Darogah's report which was based upon local investigation that the disputed road was a public thoroughfare, and Act XXI. of 1841 was therefore applicable.

The Magistrate's order having been passed under Act XXI. of 1841, in a judicial proceeding other than a criminal trial is not with reference to the precedent in Dalrymple's case 16th September, 1851, and other precedents of this Court, open to appeal to the Nizamut Adawlut under the provisions of Section 2, Act XXXI. of 1841, and I therefore reject the petition.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

NO. 44 OF 1858.

GOVERNMENT AND BUGGOBUTTYCHURN MULLICK AND OTHERS,—RESPONDENTS

versus

PETUMBER PYNE,—PETITIONER.

VAKEELS OF PETITIONER,—MR R. T. ALLAN, AND BABOO ASHOOTOSH DHUR.

VAKEEL OF GOVERNMENT—BABOO SUMBHOONATH PUNDIT.

VAKEELS OF BUGGOBUTTYCHURN MULLICK AND OTHERS RESPONDENTS,—BABOOS ANNODAPERSHAD BANERJEE, DWARKANATH MITTER AND BANEE-MADHUB BANERJEE.

Hooghly.

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Petition rejected. Held that an order passed under Act XXI. of 1841, being an order in a judicial proceeding other than a criminal trial was not open to an appeal to the Nizamut Adawlut under the provisions of Section 2, Act XXXI. of 1841.

Dispute regarding ground for burning dead bodies.

The following are the recorded grounds of appeal.

1st. The order passed by the Sessions Judge, on the 2nd February, 1858, exceeds his authority.

2nd. The disputed spot belongs to me, but the Sessions Judge without investigating into the matter, has passed an order on the 1st May, 1858, which is contrary to the practice of the Courts.

3rd. The Magistrate is not competent to reverse the decision of the Principal Sudder Ameen by a summary order in fixing the burning-place on my ground.

The subject matter in dispute in this case is a piece of ground used for burning dead bodies.

It is urged in behalf of the petitioner by Mr. Allan that the Magistrate has failed to carry out the orders issued upon the subject by the Sessions Judge on the 22nd August, 1857, that the Magistrate was bound to carry out the order and to enforce it against the eight *cottahs*, which had been all along used for burning bodies, and that by enforcing it against the petitioner's property which is north of the *ghât*, and in a different locality, he has acted in contravention of the said order and in excess of his authority, and that 2ndly the Sessions Judge, in refusing to hear the grounds on which the petitioner urged his title to the lands, has acted against law and that there has consequently been no investigation of the case.

The orders of the lower Courts in this case were passed under the provisions of Act XXI. of 1841.

The Court has just ruled in another and similar case No. 29, with reference to the precedent in Dalrymple's case and other precedents following it, that an order passed under Act XXI. of 1841, being an order in a judicial proceeding other than a criminal trial was not open to an appeal to the Nizamut Adawlut under the provisions of Section 2, Act XXXI. of 1841. 1858. May 29.

This petition therefore must be rejected.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

No. 38.

GOURMOHUN BHUTTACHARJEA,—PETITIONER.

versus

KASEENATH AND OTHERS, RESPONDENTS.

VAKEEL OF PETITIONER, BABOO BANEEMADHUB BANERJEA.

VAKEEL OF RESPONDENTS, BABOO DWARKANATH MITTER.

VAKEEL OF GOVERNMENT, BABOO SUMBOONATH PUNDIT. Hooghly. 1858. May 31.

The chief ground upon which this special appeal is urged is, that the subject-matter in dispute was a *private road* and not a *public thoroughfare* and therefore not cognizable under Act XXI. of 1841, and the petitioner's pleader cites the decision of this Court of the 19th April, 1853, in support of the plea.

Petition rejected under Section 2, Act XXI. of 1841.

Although I hold in concurrence with the precedent cited that Act XXI. of 1841, is only applicable to cases of unlawful obstruction of public thoroughfares, when the public benefit and comfort are in question, still as the Sessions Judge has directed the appointment of a *punchayet* under the provisions of the Act to decide the matter in dispute, his order being passed in a judicial proceeding other than a criminal trial is not cognizable by this Court under Section 2, Act XXI. of 1841. See the precedent in Dalrymple's case 16th September, 1857, and decisions recently passed as per margin.* The petition is therefore rejected.

* Both on the 29th May.

REGULAR CASES.

JUNE,

1858.

REGULAR CASES.

JUNE 1858.

PRESENT:

B. J. COLVIN, Esq., *Judge*.

GOVERNMENT AND JUGOMOHUN BISWAS ON THE PART OF OOMACHURN BUNODPADIA

versus

BONAI SHEIKH (No. 43,) ARADHUN SHEIKH (No. 44,) AND AMEER SHEIKH (No. 45.)

Rajshahye.

1858.

June 2.

Case of BONAI SHEIKH and others.

Held that feloniously cutting a mat wall by which linseed stored inside fell through and was stolen was burglary under Regulation XII. 1818.

CRIME CHARGED.—Burglary in having cut a hole in the plaintiff's master's granary and abstracted grain to the value of rupees 4, and having been apprehended with the stolen property in their possession.

CRIME ESTABLISHED.—Burglary.

Committing Officer.—Mr. T. E. Ravenshaw, officiating Joint Magistrate of Pubna.

Tried before Mr. L. Jackson, Officiating Sessions Judge of Rajshahye, on the 18th February, 1858.

Remarks by the Officiating Sessions Judge.—The prisoners were all caught *flagrante delicto* in the act of running away from the prosecutor's *gola* with two bags of linseed. They were first observed by the witness Rammohun Mohuldar, who had got up and gone outside for a necessary purpose. He gave the alarm and with the assistance of his fellow-servants and neighbours effected the capture. *Bonai* and *Ameer* each had a bag, and *Aradhun* was seen in their company and overtaken in the water.

On bringing these prisoners to the prosecutor's premises, it was ascertained that an aperture had been made in the floor of one of the *golas* containing linseed, by cutting the mat on which the grain immediately rested. In consequence a quantity of the linseed had fallen upon the ground.

The Officiating Joint-Magistrate originally convicted the prisoners, who thereupon appealed, and finding it expressly stated in the Magistrate's conviction that at least two of the prisoners were men of notorious bad character, which was made the ground of passing the severest sentence within a Magistrate's competence, I had no choice, with reference to Regulation XII. of 1818, Section II Clause 2, but to quash the conviction and direct the prisoners committal to be tried at Sessions.

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The facts above stated have been substantiated. The prisoners plead in detail a conspiracy on the part of the villagers to procure their conviction in revenge of their having been employed in the levy of an illegal cess by their zemindar. This was not, however, stated before the Magistrate, the mere ground of enmity being then alleged.

The prisoners decline (except Bonai) to examine their witnesses and those called by the defendant Boanai do not in any way support his allegation. They know nothing of the cess and declare that he has never been in service.

I have had some doubt in my mind, on the point whether the offence proved in this case amounts to burglary under the Regulation, which contemplates, it may be said, an *entry* as well as breaking into, while in the present case it does not appear that even the hand was introduced, merely the mat being cut, upon which the linseed of itself flowed out and others escaped. I have, however, come to the conclusion that the offence is burglary, which decision may be corrected by the Nizamut Adawlut either in appeal or on revision of the statements.

The law officer convicts Aradhun as an accomplice, it would seem, on the strength of there being no property found in his possession. This, however, is not a necessary ground of reference, nor does it prescribe any difference in the punishment awarded. The three prisoners were plainly confederates, and the mere deportation of the stolen property by one or other was probably determined by the circumstance of two being more able-bodied than the third.

There is, however, no proof on the record available to establish the notorious bad character of the prisoners, the record-keeper's report being quite inconclusive on that head and the Government Vakeel having called no witnesses to the point.

Sentence passed by the lower Court.—Two years and eight months' imprisonment with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) I see no reason to interfere with this conviction, and I concur with the Sessions Judge that the act was burglary, as defined in Regulation XII. 1818.

PRESENT:

D. I. MONEY, Esq., *Judge.*

KURRUMUDDY AND GOVERNMENT

versus

BHELLA GAZI.

Tipperah.

1858.

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Case of BHELLA GAZI.

The Court concurred with the Sessions Judge in considering the death of the deceased, who had not yet arrived at puberty, to be the result of injuries inflicted upon her by the prisoner, her husband, either by extreme violence in the act of coition or the use of *extraneous* force to effect it, and with reference to the medical evidence sentenced him under the circumstances, agreeably to the recommendation of the Sessions Judge to two years' imprisonment with labor commutable by payment of a fine of 50 Rs.

CRIME CHARGED.—Culpable homicide of Musst. Arjan, daughter of the prosecutor.

Committing Officer.—Mr. F. Tucker, Officiating Magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, Sessions Judge of Tipperah, on the 29th March 1858.

Remarks by the Sessions Judge.—The deceased was a young girl of probably eleven years of age. She appears to have been in a state of extreme ill-health from rather internal disease, which the judicial officer described as being of a mortal character. The lungs were in a state of chronic inflammation, and the stomach and intestines were in a very unhealthy condition.

Such appears to have been her state when she was subjected to the ill-usage which forms the subject of the indictment against her husband, a young and robust man of twenty years of age. Although married to him two or three years ago, no co-habitation, using the term as descriptive of the connexion between man and wife, had taken place up to the night of the 18th of last December. She has not, in fact, attained the age of puberty, and, to use the words of the Judicial officer, was not fit for sexual intercourse. On the night in question, her mother-in-law and aunt are stated to have insisted on her sleeping with her husband, and towards midnight, after screaming loudly, she rushed forth into the courtyard, where she fell prostrate. Her clothes and person were deeply stained with blood, and her condition one of complete exhaustion. The witness Esoff No. 95, who, from his tender age, I considered it expedient to examine on simple affirmation, is her brother. He stated, what he knew, with intelligence and clearness, and appears to have given immediate intelligence of his sister's state to her and his own parents. The mother Musst. Shufferjan, witness No. 96, lost no time in going to her son-in-law's house and ascertaining the condition of her daughter. The state in which she found her will be best described by quoting the result of the *post mortem* examination. The girl was slowly helped home being in such a state of prostration that from the moment of her quitting her husband's room to that of her death on the sixth ensuing day, she was unable to utter a single word,

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or to explain the cause of her condition further than by indicating by signs that it was attributable to her husband. She returned or rather was brought back to his house, but only to die, and expired on the 23rd December.

The first of the witnesses named in the margin,* is the young brother of the deceased. Sleeping close to the room occupied by his sister, he was acquainted with the compulsion under which she went to rest with her husband. He heard her scream in the course of the night, and saw her rush suddenly into the courtyard where she instantly fell on the ground. The second witness is the mother and the rest neighbours and, in the instance of the witness Akoo (No. 99,) a native doctor. These witnesses described the person of the deceased as presenting appearances of great violence done to the sexual organs, and her dress as stained with much blood. There was an evident desire on their parts to keep out of view her previous disordered state of health, but there can be no question that she was even dangerously ill from a complication of internal diseases when her husband's brutality brought matters, to a crisis, and rendered immediate, the death which probably, however, awaited her in a short space of time from natural causes.

* No. 95, Esoff.
" 96, Musst. Shufferjan.
" 97, Moza Gazi.
" 98, Jumeeruddy Pattan.
" 99, Akoo.
" 100, Rajoo Napit.
" 101, Dowla Gazi.

The medical officer Baboo Ramkinnoo Dutt thus describes the condition in which he found her person. After mentioning that the lungs, stomach and intestines were in an unhealthy state, he stated that " on examining the interior organs of generation he found the vagina freely open from its orifice to the neck of the uterus, two inches and a half in depth. The mucus membrane of the inner surface of that part, close to the neck of the uterus, was very much excoriated, ulcerated, and inflamed, which state of things must have created severe gnawing pains and much irritation. These injuries I consider to have been occasioned either by forcible penetration by a piece of wood or iron, or by immoderate sexual intercourse for which the deceased was not yet fit. From the above appearance, I infer that the deceased had a severe attack of diarrhœa complicated with inflammation of the lobes of the lungs. She also suffered from forcible co-habitation, which, together with the above maladies, caused her death."

The medical officer went on to say that the internal diseases under which the poor girl labored were severe and even mortal, and that she would in all probability have died of them alone and apart from the violence done to her sexual organs, which violence would not, of itself, have caused death, had the subject been in other respects in a healthy state. It was, however,

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greater than is usual on the occasions of sexual connection taking place for the first time, and without it death would not have occurred so soon. The deceased had not attained puberty, and was not fit to discharge all the duties of matrimony.

The defence was that the deceased died from natural causes and had been seized with diarrhœa on the day on which according to the case for the prosecution, she was ill-used by her husband. It corroborated the result of the *post mortem* examination as regards her internally diseased state prior to the death, the witnesses deposing that she had suffered from enlarged spleen accompanied with fever.

The Mahomedan law officer acquits the prisoner, on the ground, apparently, of its not being proved that the injuries done to her person were the act of her husband, or that her death was traceable to those injuries.

I differ from the Mahomedan law officer, on the following grounds.

The evidence of the boy Esoff (No. 95,) is strongly corroborated by the peculiar nature of the injuries inflicted on the deceased, which at once indicates the husband as the party who caused them. They were the result either of an attempt to create a passage by the use of extraneous force, or the consequences of extreme violence in effecting the act of coition. In either case, the husband must be regarded as the perpetrator, as the defence is not that the violence was committed by some 3rd person, but that no violence whatever was committed, the latter plea being totally refuted by the evidence of the medical officer. In permitting and even enjoining early marriages, the former law-givers of the country did not contemplate or sanction consummation while the wife was yet immature for the act. The practice of early marriages continues undisturbed, but the precaution of separating immature children from their husbands is less and less regarded among the lower classes, and it seems very necessary that any instance of violation of the laws of nature and humanity, such as that now before me, should be visited with severity. The medical officer describes the child as suffering from mortal disease of the lungs, stomach and intestines, rendering her death apparently a mere question of time. This state constituted a strong claim on the humanity and forbearance of the husband; but instead of meeting with considerate treatment she was ill-used by him while fluctuating between life and death, and the conclusion is, that disease and injury, each acting upon and aggravating the other, caused the poor child's death. The prisoner is of course entitled to the consideration that the fatal effect is traceable to the state of constitution of the deceased at the time, and that had she been in ordinary health, the violence to which she was subjected would not, in the medical officer's opinion, have sufficed to

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cause death. It, however, co-operated with disease to that end, and hastened her dissolution "which otherwise would not have taken place so soon."

Should the Court concur with me in convicting the prisoner of the culpable homicide of the deceased, I would suggest a sentence of imprisonment for two years with labor commutable by payment of a fine of 50 rupees.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) The Court is surprised by the finding of the Mahomedan law officer in this case. No one can examine with any care the whole evidence without coming to the conclusion, that the injuries found on the person of the deceased, which accelerated her death, were inflicted by her husband, and could not have been inflicted by any one else. I must say that the evidence carefully weighed leaves upon my mind a painful impression, amounting almost to a violent presumption, that the prisoner applied *extraneous* force before he, with violence, effected his purpose. The loud screams of the girl during the night, heard by the boy, her brother Esuff, the position and condition in which she was found—her state till she died, and the *post mortem* examination, all produce and confirm this impression.

It is true the native medical officer attributes the excessive injuries she sustained *either* to the forcible use of a piece of wood or iron, or immoderate sexual intercourse, for which the deceased was not yet fit. By the latter expression must be meant excessive violence in the act, and not the repetition of it, as it is clear from the evidence that she had never submitted to any connection before, and she must have rushed out of the house directly he had effected his purpose. Admitting the *alternative* upon the medical evidence, though I am inclined to believe the injuries might be attributed to *both* causes, the act of the prisoner, committed when the poor girl was sickened and weakened by disease, and when, as the Sessions Judge justly remarks, her state constituted a strong claim on his humanity and forbearance, is of so cruel and brutal a character, that looking upon it as the *more immediate*, though not, from operating upon so sick and weak a frame, perhaps the exclusive cause of her death, it undoubtedly calls for a severe example. It is impossible to say what turn the diseases she was subject to might not have taken, and how long she might not have lived, but for this inhuman act. Convicting the prisoner therefore of culpable homicide, I sentence him, under the circumstances, as recommended by the Sessions Judge, to two years' imprisonment with labor commutable by payment of a fine of 50 Rupees. Had it not been for the opinion entertained by the medical officer, I would, with reference to the precedent of the Nizamut Adawlut of the 4th October, 1843 in the case of Bawul Loha, have enhanced the punishment. I quite agree with the Ses-

sions Judge in his remarks upon the system of early marriages and early co habitation, and that the precaution of separating immature children from their husbands is less and less regarded among the lower classes; and would refer him to the opinion I expressed upon this subject, which is one of increasing importance, in the case of Sookoor Mahomed recently tried by this Court, a copy of which will be transmitted for his information. It is to be regretted that there is no law, under which the parents of the girl, who were fully cognizant of her diseased state and unfitness for connection, can be punished. This is the 3rd case of a similar character tried by the Court within the last five months.

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PRESENT:

A. SCONCE, Esq., *Judge.*

GOVERNMENT AND RADHAKISNO JULLIA

versus

AFTHAR ALLI (No. 12,) AND MOHEZUDDEEN (No. 13.)

Tipperah.

1858.

June 9.

Case of AFTHAR ALLI.

Prisoner convicted of aiding and abetting an attempt to commit rape.

CRIME CHARGED.—1st count, accomplices in the rape of Musst. Rassi Jullini; 2nd count, forcibly seizing Musst. Rassi Jullini with intent to rape or dishonor her.

Committing Officer.—Mr. F. B. Simson, Officiating Joint-Magistrate of Noakhally, zillah Tipperàh.

Tried before Mr. H. C. Metcalfe, Sessions Judge of Tipperah on the 23rd April, 1858.

Remarks by the Sessions Judge.—The prosecutor is of the fisherman-caste. He is an elderly man and has been thrice married, his present wife, the outrage on whom is the subject of this commitment, being a young and rather well-looking woman of twenty years of age. The class to which the pair belong is regarded superciliously in this part of the country, and the women are frequently the subject of impertinence which would not be ventured on in instances of females of a better caste. It is, I fancy, with reference to this fact that the Committing Officer has observed in his abstract of the grounds of commitment that "the idea that the rape of a fisherman is a less heinous offence than the rape of any other caste is erroneous." The husband catches fish, and it is the wife's province to carry them about for sale to individuals or háts in the neighbourhood, and it appears that she complained to her husband some three or four months ago of impertinence shown to her by the prisoners and two others, Panchcouri and Shadur Alli, who have hitherto evaded apprehension. These four individuals are re-

1858. June 9. Case of AFTHAB ALLI.

sidents of the same village with the prosecutor. Two of them are related, and live in the same house, and all four are immediate neighbours.

It appears that the prosecutor's wife Musst. Rassi Jullini, witness No. 1, was returning from a market at Doutul Khan on the 19th January, in company with her mother and some other females when, after dusk, the prisoners and the two other individuals I have named, seized her and carried her off the road to a deserted garden where they threw her on the ground, the prisoners and Shadur Alli closing her mouth, or holding her hands and feet, while Panchcouri violated her person. The witness Musst. Rassi Jullini, No. 1, distinctly deposed that Panchcouri effected complete penetration into her person, but was interrupted prior to complete fruition by the arrival of the witnesses Choytun Jullia No. 5, and Rutton Jullia No. 6, who heard the cries of her companions and came to her help. She was assisted home in a state of alarm and exhaustion, but, apparently, without any serious local injury, which, indeed, was not to be expected in the case of a married woman who has borne children. The two following days were Hindoo holidays but on the 22nd the prosecutor's wife laid a formal complaint before the Deputy Magistrate of Dukin Shahabazpore, who visited the spot on circuit. She stated to me that she had gone on the previous day to the darogah who desired her to petition the Deputy Magistrate, but if so, the former officer has not thought it necessary to record the circumstance.

The witnesses named in the margin* were returning from market in company with the witness Musst. Rassi Jullini No. 1, when she was carried off in the manner above described.

* No. 2, Musst. Kagelee.
" 3, Musst. Malotee.
" 4, Musst. Promessoree.

The witnesses Nos. 2 and 3, are old women and did not give their evidence in a very lucid style, but they deposed with sufficient clearness, and every appearance of truthfulness to the main facts of how and by whom their companion was carried off, and to their cries for help bringing the witnesses Choyton Jullia No. 5, and Rutton Jullia No. 6 to her assistance. The witness Musst. Promessoree No. 4, is a younger woman and far more intelligent. She gave her deposition in a very distinct manner, and quite sustained the statement of the witness Musst. Rassi Jullini No. 1, as to the manner in which she was carried away, and the state of disorder and exhaustion in which the witnesses Rutton Jullia No. 6, and Musst. Akadoshee No. 7, restored her to her companion.

These witnesses who are also of the fishermen caste and were returning from the same market, heard the cries of the women who were in company with the

No. 5, Choytun Jullia.
" 6, Rutton Jullia.

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prosecutor's wife when she was carried away, gathered from them in general terms what had passed, and hastened in the direction taken by the prisoners. The evening was moonlit and clear, and enabled them, when they came upon the party they were in searchof, to recognise the prisoners and Shadur Alli holding the woman down and Panchcouri in such a position with reference to her as to leave no doubt of his being in the act of enjoying her person.

This witness, apparently a very decent and modest woman, confirmed the previous evidence as to the prisoners having carried off the prosecutor's wife and, as she subsequently heard, ill-used her in the manner already stated.

No. 7, Musst. Akadoshee.

I may here observe that the witnesses were consistent in speaking of the prosecutor's wife as a well-conducted woman, in whose character no imputation of levity or indiscretion rests. Their testimony with regard to the estimate in which prisoners are held was less favorable. Forming my own judgment of the woman from her appearance, demeanour, and mode of narrating the wrong done to her, I am certainly disposed to regard her as a decent and modest woman, of comely appearance. The circumstances of her humble position in life, and liability to insult consequent on her carrying fish to market for sale, strengthen rather than lessen her title to protection under the laws common in their application to all classes. It is an undoubted fact in this part of the country at least, that the wives of men of low caste and following pursuits calling them much from home, such as beggars, fishermen, and others, are regarded as fair subjects for insult and are the general victims in cases of violation. No reason whatever exists for supposing that the prosecutor, or his wife, or any of the witnesses for the prosecution has or ever had, the slightest ill-will towards the prisoners or their, as yet, unapprehended companions. A malicious origin for the case is not even suggested, and the evidence for the prosecution is therefore untainted by any imputation of malice or wish to injure the accused. This is a very essential point in weighing the value of testimony in a case of this description.

The defence was an *alibi* and, of course, a denial of the crime set forth in the indictment. The prisoner Afthar Alli No. 12, added that the prosecutor's wife entertained a criminal connexion firstly with Panchcouri and secondly with Humeedoollah. This statement I believe to be wholly gratuitous and malicious.

The *alibi* was proved in neither instance to my satisfaction. The usual exact detail of dates and petty circumstances was given with customary suspicious precision, and it is very doubtful whether the first witness, examined for the defence, Bholah

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Gazi (No.10,) did not perjure himself. He, in the first instance, denied that the prisoner Afthar Alli, No. 12, was his brother-in-law, but was driven by a short cross-examination to admit that such was really the case.

The Mahomedan law officer acquits the prisoners chiefly on the ground of disbelief of the evidence as derived from connections of the prosecutor and females, and discredit of the recognition of the prisoners.

From this verdict I differ. I have already entered at sufficient length into the merits of the case as I view them to render much further remark unnecessary. I would, however, observe that it was quite natural that the prosecutor's wife should return from the market in company with her mother and sister-in-law who occupy the same house and share in the same vocation, and that the fact therefore of the evidence to the prisoner's seizing and carrying her away being derived from them, can, in no way, either as connections or females, affect the merits of the case. I can observe no discrepancies in the evidence to any material extent or on any material point. The hour at which the outrage took place was barely 7 o'clock in the evening, and the moon was so far advanced as to afford considerable light. The prisoners are near neighbours of the witnesses and well known to them. And finally, their evidence is entirely free from the slightest suspicion of malice or ill-will.

In my opinion there is sufficient proof to convict the prisoners of complicity to the crime of rape, and at all events, I conceive, that the second count of the indictment is established. As it is my duty to suggest a sentence in accordance with my own finding on this indictment, I would therefore recommend that the prisoners be sentenced to 5 years' imprisonment each with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Sconce.) The report of the Sessions Judge in this case conveys a clear, careful and exact account of the evidence recorded. The details need not be repeated. Concurring with the Sessions Judge in his opinion of the evidence, I convict the prisoners Afthar Alli and Moheeoodeen of aiding and abetting an attempt to commit rape on the person of Rassi Jullini; and, as recommended by the Sessions Judge, sentence the prisoners, each, to five years' imprisonment with labor and irons.

PRESENT:

J. H. PATTON, ESQ., *Judge*, AND D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT AND ZUMEEROODEEN

versus

SHEIKH BUXEE.

Dacca.

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Case of SHEIKH BUXEE.

The prisoner convicted of a cruel and deliberate murder was sentenced to suffer death, the Court not admitting as an extenuation of the crime or ground for remitting the extreme penalty of the Law, the plea of the prisoner that he was suffering great pain at the time when he committed the act, such plea not being established by any evidence.

CRIME CHARGED.—Wilful murder of Musst. Sonamonee and severe wounding of Musst. Bishoo, her daughter.

Committing Officer.—Mr. J. R. Muspratt, Joint-Magistrate of Furreedpore.

Tried before Mr. R. Abercrombie, Sessions Judge of Dacca, on the 1st April, 1858.

Remarks by the Sessions Judge.—The deceased Musst. Sonamonee was the mother of Musst. Bishoo, the wounded woman, who is married to the son of the prisoner. Bishoo being in an advanced state of pregnancy, and consequently unequal to bodily fatigue, her mother took up her residence in the house of the prisoner, where she resided with her husband, to assist her in performing the household duties of the family.

Musst. Bishoo the only eye-witness to the deed, deposes that her mother was cooking the dinner, when the prisoner, who was labouring under a painful disease, entered the house and inflicted several severe wounds on her mother with a *sein*, a kind of hatchet used for cutting date trees. She (witness) went up to interfere when a blow, probably intended for her mother, fell on her right arm causing a bad wound. Sonamonee fell senseless, was removed to the hospital and died a few days afterwards. The prisoner had been very much annoyed the previous day, because Sonamonee had entertained a singing party in the evening in honor of an expected auspicious event in the family, and the idea of their rejoicing and making merry at a time when he was suffering great pain, irritated him considerably. He had left the house, in consequence the previous night, and slept at a relative's close by. He returned in the morning, when he taxed Sonamonee with her conduct towards him. High words passed between them, which ended in the tragical event related above.

Several witnesses arrived on the spot after the deed had been committed and saw the two women lying wounded and bleeding, and the prisoner standing outside with the bloody instrument in his hand. The women both told them that the prisoner had wounded them. Beerandee, witness No. 9, took

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the weapon out of his hand. Nazira* Bibee, in addition to the above, states that she saw the prisoner after the "*sein*" had been taken from him, run into her compound, where he seized hold of a *dao* and inflicted a wound on his own arm. Shariatoollah† snatched the *dao* out of his hand. Previous to her death, Sonamonee's deposition was taken by the Joint-Magistrate, in which she describes how she was wounded by the prisoner.

* Witness No. 11.

† Witness No 15.

Dr. Bose, the medical officer, in his evidence, gives a description of the wounds which he found on the deceased, two of which were of a very serious nature, and, in his opinion, were the cause of her death. The wound on Musst. Bishoo though severe is not of a dangerous character.

The prisoner confessed before the police, stating that he was subject to severe pains in the stomach, which prevented his eating or drinking, that he had desired Sonamonee on the previous day to cook some fish for him, as he was free from pain and able to eat. She did not attend to his wishes at the time, but offered him food in the evening when the pain had returned and he could not eat. In addition to that annoyance, *Sonamonee* had vexed him very much by having a singing party in the house and making merry when he was suffering acute pain. He remonstrated with her on her conduct the following day, when high words passed between them. He became angry and fetched a *sein*, with which he was going to strike her, when she knocked it out of his hand with a stick she was stirring the rice with, and taking hold of the *sein* wounded him in the arm with it. On this he seized the instrument out of her hand and inflicted several wounds upon her person. The daughter, he states, was wounded accidentally, when she came up to the assistance of her mother. His confession before the Magistrate is to a similar effect.

In the Sessions Court he pleaded "*not guilty*" to the charge, but added that the pain in his stomach was sometimes so acute, that he knew not what he did when suffering from it. Deceased used to irritate and vex him by not giving him his meals when he wanted them.

The jury who sat with me on the trial, convict the prisoner of "culpable homicide."

Of the guilt of the prisoner there cannot be a doubt. The crime is fully proved against him by the deposition of the murdered woman, Musst. Sonamonee, taken down by the Joint-Magistrate previous to her death, by the testimony of the wounded woman, Musst. Bishoo, by the circumstantial evidence of the witnesses who saw the wounded women immediately afterwards and the prisoner standing close by with the bloody

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instrument in his hand, and lastly by the confession of the prisoner. The provocation he pleads that he received at the hands of his unfortunate victim, was very slight, and cannot for an instant be deemed sufficient to warrant the commission of the foul deed. Although the witnesses agree in stating that the prisoner was subject to pains of an agonizing nature, this statement is not confirmed by the testimony of the medical officer, who deposes that "the prisoner does not bear the appearance of a man suffering for any serious internal evil, but partakes of his food regularly. He may be subject to a slight cholic." That the prisoner was first wounded by the deceased as urged in his mofussil confession is not to be believed. The story is contradicted by the evidence of witness No. 11, who saw him inflict the wound upon himself, and her testimony is confirmed by that of No. 15, who snatched the weapon, with which he inflicted the wound, out of his hand. This weapon was a different one to that with which the murder was committed. Moreover the doctor pronounces his wound to bear the appearance of a self-inflicted one.

I cannot concur with the jury in considering the crime simply "culpable homicide." The facts of the case in my opinion show on the part of the prisoner the intent to commit murder, of which crime I would convict him. Taking, however, into consideration the provocation, though slight, which he did receive, and making some allowance for the pain he is said to have been suffering from, I would spare his life, and recommend a sentence of transportation beyond sea for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and D. I. Money.)

Mr. D. I. Money.—Looking at the confession of the prisoner in connection with the whole evidence on the record, there can be no doubt of his being guilty of a wilful and deliberate murder. The only question is whether he should be sentenced to suffer death, or to imprisonment for life in transportation beyond sea, as the Sessions Judge recommends. Cholic pains might produce a phrenzy of mind that would deprive a person momentarily of a controul over his actions, and under their influence, where provocation was given, he might not be able to resist a homicidal impulse.

But there is no reliable evidence to show that the prisoner was in this condition, or in such a condition as to make him under the circumstances an object of mercy.

I should be glad at any time, upon good cause shown, to listen to the recommendation of the lower Court. But as the prisoner's own statement of the extreme pain he was suffering at the time is not confirmed by other evidence, and it is to some extent opposed to the testimony of the medical officer,

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I fail to see any extenuating circumstances in the case and would therefore pass upon him a capital sentence.

Mr. J. H. Patton.—I have carefully considered the proceeding held on this trial and have no doubt of the prisoner's guilt. He appears to be of a morose, irascible temperament, easily provoked, and possessing no controul over his passions when roused. He had no reasonable cause for the outrage he committed, and the act was as deliberate as it was cruel. The extenuating plea put forward by him I utterly disregard as operating in his favor. I would convict him of wilful murder and sentence him to death.

PRESENT :

B. J. COLVIN, Esq., *Judge.*

GOVERNMENT

versus

BOBAH COMMONLY SO CALLED ON ACCOUNT OF HIS INFIRMITY, HIS PROPER NAME BEING AMEER KHAN.

Backergunge.

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June 10.

Case of AMEER KHAN.

The prisoner born both deaf and dumb charged with wilful murder and wounding with intent to murder, was on conviction sentenced to imprisonment for life in the zillah Jail.

CRIME CHARGED.—Wilful murder of Musst. Shurbanee and wounding Musst. Annoo with intent to murder her.

Committing Officer.—Mr. H. A. R. Alexander, Magistrate of Backergunge.

Tried before Mr. F. B. Kemp, Judge of Backergunge on the 23rd April, 1858.

Remarks by the Sessions Judge.—This case has been tried with the assistance of a jury.

The prisoner is both deaf and dumb and has been so from his birth, his mother is also dumb.

Before putting him on his trial, I thought it advisable to direct the Magistrate to place the prisoner under the surveillance of the Sub-Assistant Surgeon for a few days. The Sub-Assistant Surgeon Baboo Doorgadoss Kur, who has left this station, has submitted a report which is with the record; his deposition before the Magistrate has been attested in this Court by the witnesses named in the margin.* The late Civil Assistant Surgeon of this station Dr. M. Scanlan, who has left the station and the country, was also examined in the Magistrate's Court. His deposition has been attested in this Court by the witnesses named in the margin† who are both acquainted with English.

* No. 20, Ramgutty Haldar.
„ 21, Dwarikanath Mozoomdar.

† No. 18, Mr. J. F. Pereira.
„ 19, Doorgachurn Sein.

There can be no reasonable doubt of the sanity of the prisoner, his demeanour during the trial was remarkably quiet and self-composed. Before directing him to plead to the charges I ascertained that the uterine brother of the prisoner who is a witness in this case, and who can both hear and speak, professed his ability to interpret the signs made by the prisoner. I therefore swore the witness to interpret faithfully between the prisoner and the Court. The prisoner, pleads *not guilty,* he pointed out upwards as if in appeal to God, to me as if in appeal for justice, and to his forehead as much as to say that his fate was written there. His brother by signs made him

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The circumstances of this painful case are briefly as follows. On the night of the 27th of December last, Sunday, the witnesses No. 1, Musst. Annoo, No. 2, Nasoo-chokra, No 3, Musst. Janoo were sleeping in the same house, with them were Nagur Alli, aged 3 years, the brother of the witness No. 2, Nasoo, and Surbanee the deceased aged about 2½ years. Surbanee was sleeping close to the witness No. 1, Musst. Annoo. Musst. Annoo is a widow, Musst. Janoo is a very young woman, and she was residing with the witness Annoo during the temporary absence of her husband.

That the prisoner on the night of the 27th December 1857 entered the house where the above parties were sleeping, and severely wounded with a *dao* weighing 14 chittacks, and a sketch of which will be found with the record, Musst. Annoo and Surbanee, the latter of whom died in the hospital of this station, on the 31st of December, 1857, from the effects of the wounds inflicted upon her by the prisoner, is clearly proved by the witnesses named in the margin.* The boy Nasoo aged between eleven and twelve years is a remarkably intelligent lad and was fully conscious of the responsibility of the solemn affirmation administered to him.

* No. 1, Musst. Annoo.
,, 2, Nusso Chokra.
,, 3, Musst. Janoo.

The evidence† of the brother of the prisoner, proves that on a Sunday in the month of Pose last, towards the evening, the witness returned to his house; that he did not see the prisoner at home; that the people of the house were unable to tell him where the prisoner had gone; that the next day early in the morning Phedoo chowkeedar told the witness that his brother the prisoner had wounded the woman Annoo and the child Surbanee, and directed the witness to produce his brother the prisoner; that the witness and the chowkeedar searched the whole of that day for the prisoner; that at about 8 P. M. of that day, the witness saw the prisoner with a *dao* in his hand coming from the west towards the east in a plain west of the house of one Lushkur Khan; that the prisoner, seeing the witness and the chowkeedar, ran off; that the witness and the chowkeedar pursued and seized the prisoner with a *dao* in his hand; that the prisoner was secured and kept in the house of Konai Fukeer; that the prisoner managed to effect his escape during the night; that he was reapprehended on the morning of Wednesday by Akbur chowkeedar witness No. 7, and others. The witness identifies the *dao* produced in Court as the one which was found in the hand of the prisoner when he was apprehended and that the *dao* belongs to the family of the wit-

† No. 5, Noyan Khan.

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ness and the prisoner: deposes that he heard from the members of his family that the prisoner was not at home on the night of Sunday.

The sanity of the prisoner has been established by the evidence before the Magistrate of the Sub-Assistant Surgeon Baboo Doorgadoss Kur duly attested in this Court.

There is certainly no proof that any improper connection existed between the prisoner and the witness No. 3, Musst. Janoo; yet I cannot attribute the motive of the prisoner in entering the house of Annoo at night and committing the crimes he did to any other source but that of an improper connection with Janoo, either pre-existing or attempted for the first time that night. The boy Nasoo too deposes that his mother Annoo witness No. 1, had forbidden the prisoner to visit her house. The witness Musst. Annoo is an elderly woman and has been the mother of thirteen children, Musst. Janoo is a young married woman but she has no family. The prisoner is a young man of about twenty-two years of age, good looking and unmarried. The night of the 27th December was a moonlight night. The prisoner entered the house through the western door. The moon would shine into the house through that door on the night and at the time the crime took place, thus enabling the witnesses Nos. 1, 2 and 3, to recognize the party who committed the crime.

The jury would convict the prisoner of wounding the witness No. 1, Musst. Annoo with intent to kill, but acquit him of the charge of the wilful murder of the little girl Surbanee, inasmuch as the jury attribute her death to accident.

In this verdict I cannot concur: I would convict the prisoner of the wilful murder of the child Surbanee and with wounding Musst. Annoo with intent to kill. The spleen and internal viscera of the child Surbanee were wounded, and she died in consequence of the injury received; the wound on the right fore arm of the witness Annoo is reported by the medical officer to be severe though not dangerous to life, the weapon used by the prisoner was a *dao*, sharp and of considerable weight. I cannot find that the homicide of the child Surbanee was accidental and therefore excusable. "If a party be doing anything unlawful, and a consequence ensues which it may be he did not foresee or intend, as that of a man or the like, still his want of foresight shall be no excuse, for being guilty of one offence in doing antecedently what is in itself unlawful, he is criminally guilty of whatever consequence may follow the first offence."

What then are the features of this case? The prisoner is of age, he is sane, a responsible agent; at night, armed with a sharp and heavy *dao*, and clearly for no good purpose, he enters the house of the witness Annoo; he wounds Annoo severely as also

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the child Surbanee, who dies from the effects of the wound inflicted by the prisoner. The murderous intent may be inferred from the acts of the prisoner and the dangerous nature of the weapon used.

I wish to give the prisoner every advantage. Were it not for his natural infirmities, which may possibly have prevented his clearing himself from the charges made against him, I should have had no hesitation in recommending a capital sentence; as it is, I think justice will be satisfied, with a sentence of imprisonment for life in irons and with labor in the zillah jail.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The Sessions Judge has tried this case strictly in conformity with the instructions contained in Circular Order No. 137, dated 3rd August, 1814. The prisoner pleaded, as interpreted by his brother, not guilty to the charges; but there is no doubt from the evidence on the record, a correct outline of which is contained in the letter of reference, that he is guilty of them. I concur in the conviction, and, for the reasons stated by the Sessions Judge, in the sentence proposed by him.

PRESENT:

J. H. PATTON, ESQ., *Judge* AND D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT AND ALLEEBUX

versus

ALLABUX.

Purneah.

1858.

June 15.

Case of ALLABUX.

CRIME CHARGED.—Murder.

Committing Officer.—Mr. B. R. Perry, Deputy Magistrate of Kishengunge.

Tried before Mr. W. H. Brodhurst, Officiating Sessions Judge of Purneah, on the 29th March, 1858.

The prisoner was convicted of wilful murder, and there being no extenuating circumstances, sentenced to suffer death. The Court observed that whenever a Sessions Judge considers it

Remarks by the Officiating Sessions Judge.—The prisoner is charged with having murdered Musst. Harrin, his brother's widow.

The prisoner pleaded *guilty.*

The prosecutor Alleebux stated that he is a brother of the deceased, and lives in the village of Huldeebaree about three *coss* from Sealtore where his sister latterly resided with the prisoner; that on a Monday in Magh last the prisoner came to his house, and informed him that his sister had died four days before from *momorakee,* an illness apparently similar to cholera, and he invited him to the funeral ceremony; that he agreed to go, and he heard nothing further till about ten days

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his duty to recommend that the extreme penalty of the Law should in such a case be remitted, he should point out the extenuating circumstances that would justify such a remission.

afterwards, when he was sent for by the Darogah, who had come to Sealtore to enquire into the circumstances attending Musst. Harrin's death; that on going to Sealtore he heard from the Darogah, his sister had been murdered, and he heard the prisoner say, he and five other men whom he named, were the guilty parties, and that his sister had been taken to the bank of the Petchlah river on pretence of going to Haldeebaree to see her brother, the prosecutor, and there killed. The prosecutor also stated that his sister was with child, which was the cause of the murder; that her husband had died about five years ago, and she lived in her own house at Sealtore with her brother-in-law Allabux, the prisoner. That the other three prisoners (since acquitted) are not related, but that Jamabux the younger son of the prisoner Belatoo had been intimate with his sister since the month of Aughun last, and that he had heard from persons frequenting the neighbouring *haut* of Haldeebaree that his sister was pregnant. That Belatoo was the *malgoozar* of the village of Sealtore and he had caused the other prisoners to commit the murder, because his son Jumabux was engaged to be married, and he feared his son's connexion with the deceased would prevent the marriage taking place. Prosecutor further stated his sister was older than himself or probably about twenty-eight years of age, and had one child aged five years, that he had not seen his sister for the last year, that the murder was committed at a spot about two *coss* from his house and one *coss* from Sealtore.

The prosecutor's deposition before the Magistrate does not vary much from the above.

The prisoner was committed upon his own confession, the direct evidence of two accomplices and the circumstantial evidence in the case.

The two eye-witnesses retracted before this Court, what they had stated to the Deputy Magistrate alleging their former depositions had been obtained by ill-treatment and fear of the police.

The prisoner's confession to the Deputy Magistrate is a long one, and the object of it appears to be to implicate the other prisoners in the case, to shew that one Jumabux the son of the prisoner Belatoo was the original cause of the murder by his intimacy with the deceased and that he, Allabux, was an unwilling participator in the crime. As the confession is the principal evidence against the prisoner and it is important to see what part he actually took in the murder according to his own showing, I transcribe the greater part of it, Allabux states his elder brother, died about five years ago, and left his widow (Harrin deceased) and one child of six years, who since that time have lived with him, that he is servant to Khedjerbux an accomplice in the murder, and he supported his sister-in-law

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and her child from the wages he received for service; that he stayed day and night at his master's house, eating and sleeping there; that one day in Aughun last his sister-in-law had taken his cloth as usual to wear on going to the *haut* and in the evening when he went to the house to fetch it, Jumabux hearing him come ran out of Harrin's room, that he wanted to seize him, but did not like to do so, when he found who it was (Jumabux being cousin to his master Khedjerbux). Allabux then says, I informed his elder brother Enaitoollah, who told me not to mention the circumstance to any one as he was a brother, and the woman was my sister-in-law and therefore a portion of the shame would fall upon me, and that as his brother was to be married soon, the circumstance might prevent the marriage taking place. In Pous Musst. Harrin heard of Jumabux's intended marriage, and said to me and the villagers, See, Jummabux has got me with child and he is going to marry elsewhere, when I have a child my brother-in-law will turn me out of his house, and who will then protect me? I shall be helpless. After this about the end of Pous or beginning of Magh, at night, I was sleeping on a box outside my master's house, and when about a watch of the night had passed, Husnah, nephew to Belatoo Malgoozar came and woke me up, saying Belatoo wanted me. I went and found Belatoo and Halal of village Kootamparah son of a friend of Belatoo, and Enaitoollah son of Belatoo, and Khedurbux, my master, all seated on a *machan* in an out-house where horses sometimes stand, they gave me a mat to sit upon and Husnah brought the *hookah*, Halal began saying to me, " Your sister is pregnant, and you are the cause: you must marry her. I said, It is true she is pregnant, but not by me: why should I marry her?" Then Halal said, " If you will not marry her, a complaint will be made to the Cazee and you will be fined Rs. 20 and you will be beaten." I said, If she declare I am the father, then of course the Cazee will fine me, but if she mentions another person as the father why should the Cazee fine and beat me? The Cazee will decide. At last, after endeavouring for a long time to induce me to marry her, I refused. So Halol said, If you will not marry her, then give her medicine to cause abortion." To this I did not agree. Then he said, Call Musst. Harrin, and he sent Husnah with me, I called Harrin and they took her into the yard. I also went there, only Khedjerbux and Belatoo remained outside. Belatoo's wife, whose name I do not know, was woke up and Halol obtained from her a curry stone and a little ginger, and taking out the root of a medicinal herb, gave it to Belatoo's wife to mix with the ginger, and she then gave it to Harrin to drink. Harrin refused to take it, so Halol threatened to beat her with a little wooden stool, and Belatoo's wife said, if she would not take it she would be bound before and behind and beaten and then she

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would be made to drink it. From fear of this she took the metal glass, and I don't know if she drank a little or not. Belatoo's wife said she had. Halol said, "My physic is so strong that taking a little will suffice to cause abortion." They then let her go. I took her home and went to sleep again on the box of my *malgoozar*. Ten days after, Enaitoollah asked me if the medicine had taken effect and caused abortion, I said I had seen no trace of it. He said, Come to me to-night for something, so I was sitting outside in Khedjerbux's yard, when at about a watch of the night, Husnah came and took me away and I found them sitting in the same place as before, and I sat on the mat again. Halol asked me again to marry her, but seeing I would not consent, he promised to give me Rs. 20 and get me married to Jadoo's daughter if I would kill Harrin. To this I did not agree. On the morrow a Sunday (the Taree Bhurut festival) Halol said to me frequently, Take her out of the house, on pretence of going to see her brother, ill, and go with her. Set off in the evening, and remain under a mangoe-tree rather to the north of a place called Oorgunah pretending that you have a stomach-ache and cannot proceed further. At night when dark we will follow and complete the business. So about an hour before evening, Enaitoollah, Belatoo's elder son came to my house where I was and before my sister-in-law said, Your brother-in-law is very ill, and has sent for you and your sister-in-law. The latter said it is evening how can I go now? Enaitoollah said he is very ill, if you go now you will see him and get the few rupees he has. If you go in the morning and he is dead, you will not see him nor get his money, then what will you do? My sister-in-law said how can I go alone in the evening, Enaitoollah said she cannot go alone, you go with her. So Musst. Harrin set off with me at once, and according to their instructions we stopped under the tree, on pretence of my being ill. The place was about two or two and half *coss* from my village. When one hour of the night had gone Halol and Enait and Khedjerbux passed about two or three *russees* distant, and Husnah came to us. My sister asked where he was going, he said, to Huldeebaree to a Brahmin. My sister said, Let us three go together; so we set off, and Khedjerbux, Halol and Enait went westwards at some distance from us. I saw them, but Harrin did not see them. They went forward and stopped on the east bank of the Petchlah river and they met us on arrival. Halol gave me a knife saying, Drive this through, Harrin began to cry and shout. I said, This can never be done by me. Halol told Husnah to put a cloth in her mouth and told me to kill her. I again refused and Khedjerbux also said he was afraid and we should not do it, but take her back. Halol said, If you take her back alive, she will inform to-morrow, and have all of us punished, we shall be hung. So Halol, Husnah and Enait

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together threw Harrin down and with abuse called Khedjerbux. Husnah with one hand put a cloth in her mouth and with the other pressed her head down and Halol with the knife got on her bosom, Enait and Khedjerbux held her arms. Halol told me to come, and said, Let us all do this, that no one may tell against another." So all seized her and Halol placing the knife at her throat said, "All of you press my hand." We all put our hands on his and he pressed the knife in Harrin, turned to the other side and they cut her throat on that side too. I was much frightened, I had put off my clothes; so had the others. We had only our *dhotees* on in doing this. Turning over the body we put it in the water, washed our hands and went home with our clothes. Halol left the knife near the body, but he told Husnah to bring it away; it would be useful. Husnah washed it and brought it away. The knife belonged to Belatoo and Enait. It was about one and half foot long and was used for killing cattle. Husnah took away the knife. I can recognize it if I see it. I mentioned in the village I had taken Harrin to her brother and according to Halol's instructions I again informed the villagers four days afterwards that as I had heard nothing of Harrin, I was going for her. I went to Huldeebaree to her brother and told him his sister had died of *momorakee* after eight days' illness. I returned next morning and told people of my own village she had died of cholera. None of the people were aware of her having been killed. My sister-in-law on the night of the murder gave her child to the wife of Futto, and told the child she would return in the morning after seeing his uncle. He remained there the night. The child knows his mother is dead. Khedjerbux has it at his house. On being questioned, the prisoner said he did not receive the Rs. 20 promised by Halol. The latter said he would give it after enquiry was over. I said I would tell if they did not give it to me. Halol said, You had better not, you will be taken up first. Harrin was young. I had no illegal acquaintance with her. I have confessed voluntarily.

This confession was properly attested by the witnesses Nos. 13 and 14, and appears to have been voluntary.

No. 13, Neamutoollah.
" 14, Mozum Ali.

The witnesses also as per margin† deposed to Allabux having told his sister that her brother was ill, and that she must go and see him; to his setting off with her the same afternoon, to his informing the village that he had left her at her brother's house, to his telling them another day that he was going to fetch her back; that he returned and informed the village, Harrin had died of cholera and then exhibited signs of grief.

† No. 15, Rhamut.
" 17, Fyzoo.
" 18, Batassoo.
" 19, Bukshah.

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The witnesses Nos. 8 and 9, prove the finding of the body in the Petchlah river near the village of Boderah,* and that the throat was cut on both sides. The native doctor No. 11, Sheikh Lalmohummud, who examined the corpse, said, he found two wounds on the throat, each four fingers long and two fingers wide; deep wounds to the bone, as if cut with a knife. There was a scratch across the wind-pipe, no other wounds. The woman must have died from the wounds on either side of the throat. There was no appearance of disease about the body.

* No. 8, Deanut.
„ 9, Dullo.

The prisoner made no defence, referring the Court to what he stated before the Magistrate, that he had nothing further to say, and had witnesses to call.

The case was tried with the aid of the law officer. The *futwa* declared the charges not proved against any of the prisoners, but that complicity and privity were established against Allabux by his confession, and that he is liable to *akoobut*.

It will be observed in the confession that although the prisoner wishes to shew he was not the primary cause of the murder and was made an accomplice by other parties who instigated and counselled the deed, yet, that in reality, he took a very active part in the crime. He acknowledges to twice voluntarily attending at night a meeting of persons who were plotting injury to his sister-in-law, and of which he told her nothing. He acknowledges taking her from home on pretence of going to see her brother, who he said was ill, knowing that in reality he was taking her for the purpose of being murdered, that when he had arrived at the appointed place of meeting, he feigned illness, in order to keep his sister there till his accomplices arrived, and then, that he aided in her murder by pressing the hand of the man who used the knife, all this was quite voluntary, according to his own statement. The excuse is, that he was told to do it, but he was not obliged to obey, and had he been disinclined, he would not only have refused to have any share in such a crime, but would have informed his sister-in-law of the plot against her life; have taken measures for the prevention of the deed, and have denounced the conspirators.

The part he states he took in the death of his sister-in-law and his conduct before and after the murder as described by the witnesses, prove that he was a free agent, his statement as to one Jummabux having been intimate with deceased, I am inclined to doubt, for although the prosecutor mentions the circumstance, I did not place much reliance on that part of his statement; he had not seen his sister for a year, and therefore what he stated was from hearsay. The witnesses who resided in the same village, for the most part said they supposed deceas-

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ed was pregnant by the prisoner, and I am disposed to think their supposition was the correct one.

If correct, the story about Jummabux was invented, in order to implicate the other prisoners. I do not think all the facts of the case have been elicited. There seems to have been some ill-feeling between certain parties in the village, and it is not improbable that enmity may have been the cause of some of the parties being unjustly arrested. The prisoner Allabux I consider was a principal in the crime; whether he was aided or not is uncertain.

I therefore dissent from the *futwa* of the law officer, and would convict the prisoner Allabux upon his confession, and the circumstantial evidence, of the crime, with which he stands charged, namely, the wilful murder of Musst. Harrin, and under all the circumstances of the case, I recommend he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and D. I. Money.)

Mr. J. H. Patton.—The prisoner admits that he voluntarily attended meetings of persons designing bodily injury to the deceased, jeopardizing life, without, in the slightest degree, apprizing her of the mischief intended, or the machinations practised against her. He also admits that he took her from home on pretence of conducting her to her brother, whom he represented as being ill, whilst he was actually leading her to the place of slaughter, that he aided and furthered the project of her destruction by detaining her under a false plea of illness at the place appointed for the murder until the arrival of his accomplices, and that he assisted in the actual perpetration of the crime by pressing the hand with which the knife was applied to the throat of the deceased. He admits all this, freely and voluntarily, and his only excuse, or plea of extenuation is that he was told to do it.

Be the circumstances what they may under which this cruel and cold-blooded *double* murder, if I may so express myself, has been committed, whether by the prisoner alone or with the aid of accomplices, the above admissions of the prisoner leave no doubt on the mind that from first to last he was an active agent in the crime and actually assisted in its perpetration by adding efficacy to the means employed in the destruction of life. Besides these confessions there is circumstantial evidence on the record of the trial, strongly corroborative of the presumption that he was most interested in the removal of the deceased and took an active part in effecting that object by means of her death. I would convict the prisoner of the wilful murder of Musst. Harrin while in a state of pregnancy, and sentence him to suffer death.

Mr. D. I. Money.—There is so much circumstantiality in the

confession of the prisoner, that, although such parts as implicate other persons have not been borne out upon the trial, I see no reason to doubt, that in the horrible account he has given of the murder he has stated what is true. We have, however, only to look upon the confession, which is proved to have been given voluntarily, as bearing upon his own share in the transaction, and as evidence against himself. Upon this confession, and under the circumstances as they appear in the evidence upon the record of the trial, he is clearly guilty of a most cruel and deliberate murder.

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I do not understand upon what grounds the Sessions Judge, convicting the prisoner of wilful murder, recommends him to be transported for life. Whenever he may consider it his duty to recommend that the extreme penalty of the law should be remitted, he should point out the extenuating circumstances that justify such a remission. I see nothing whatever in this case to extenuate the crime, and render the prisoner an object for mercy, and therefore concur in passing sentence of death upon him.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

RAMESSUR MUNDUL AND GOVERNMENT

versus

EDOO SHEIKH (No. 9,) BABOO SHEIKH (No. 10,) MEAHJAN SHEIKH (No. 11,) TEELUCKLALL LALLA (No. 12,) SHEWBURT KAHAR (No. 13,) HEERALALL PATTUCK (No. 14,) HURNAM SINGH (No. 15,) OMRAW SINGH (No. 16,) SOLEMAN HAPSHEE (No. 17,) FOOKEER SHEIKH (No. 18,) AND ICHABAR OOPERDEA (No. 19.)

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CRIME CHARGED.—Prisoners Nos. 9 to 19, 1st count, dacoity with wounding in the house of the prosecutor, in which dacoity property to the value of rupees 104-3-9 was robbed, and in which Haradhun Mundle was severely and Ramlall Mundle slightly wounded; prisoners Nos. 9 to 16, 2nd count, knowingly receiving and retaining in possession a portion of the property plundered in the aforesaid dacoity.

CRIME ESTABLISHED.—Prisoners Nos. 9 to 15, and 17 to 19, dacoity with wounding; prisoner No. 16, knowingly receiving and possessing plundered property.

Committing Officer.—Mr. C. Spencer, Officiating Magistrate of Moorshedabad.

The appeal of the prisoners rejected, and the sentence of the Sessions Judge confirmed. The

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Court remarked that the local investigation leading to the apprehension and conviction of the prisoners was very creditable to the police.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 23rd April, 1858.

Remarks by the Officiating Sessions Judge.—On the morning of the 16th March last, the darogah received intelligence of a dacoity having occurred the previous night in the village of Gurrabhosa in the house of the prosecutor Rameshwar, he was about to start for the spot, when witness No. 38, Koonjudass went to him and told him he had just observed a body of six men, one of whom carried a large bundle, passing quickly through the village, the darogah immediately sent the mohurrir to the prosecutor's village, and started himself in pursuit of these men. The rest of the case will best appear from an analysis of the evidence which I proceed to give.

The prosecutor deposed to the dacoity having occurred, to the dacoits having wounded his uncle Haradhun and one Ramlall, and to the villagers having attacked the dacoits who, however, escaped with plundered property to the value of rupees 104-3-9.

Witness No. 1, Brojolall Chatterjea, darogah, deposed to his having started after the men mentioned to him by Koonjudass, and stated that after riding about half a mile and despatching burkundazes in every direction, he saw on the banks of a tank called Notungram a man walking fast towards Horespore, he called to him to stop and not getting satisfactory answers from him he opened his *chudder*, and found under his left arm the property No. 1, this person was No. 9, prisoner; the darogah riding further on towards Horespore *mát* saw two men with a bundle sitting on the ground, they immediately arose on seeing him; he seized them both and found that they were prisoners Nos. 10 and 18; No. 10, began to struggle but witness No. 2, Chonehal burkundaz coming up with others, they were both apprehended, in No. 10's bundle were the articles Nos. 2 to 6, and upon No. 18, was a fresh wound on the hip; about quarter of a mile further on, the darogah observed three men, and with the assistance of Nitye Ghose and others he seized them, they were Nos. 11, 13 and 14, and on searching them he found in the waist of No. 11, the property No. 9, and tied up in a cloth on the back of No. 13, the property Nos. 7 and 8, and under the arm of No. 14, wrapped up in a quilt No. 10, were a sword and a heavy iron flail; about half a mile further on in the *mát*, the darogah saw one man walking and in his hand was an axe, this was No. 17, who, on being seized, told the darogah that three more men had gone on towards Khonapookur, the darogah followed them, and with some difficulty apprehended them, they were prisoners Nos. 12, 19 and 20, and on the waist of No. 12, tied up in the cloth No. 13, were a pair of silver bracelets No. 11, and a gold *nath* No. 12; and on No. 20 resisting his capture, 4 rupees and one pice fell from his waist. The darogah took them all to the thannah and while engaged in examining the

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prisoners the witness No. 12, Mohur Sheikh brought up the prisoner No. 15, whom he had apprehended on suspicion, and on him were two swords and the property Nos. 15 and 16. The prisoners, except Nos. 13, 14 and 20, confessed to having committed this dacoity; No. 13 confessed that he had knowingly received the property found upon him, and Nos. 20 and 14, denied all knowledge of the matter; they were all sent to the Magistrate; the prisoner No. 10 named amongst others the prisoner No. 16, who, after some search, was apprehended on the next day with property No. 17, he denied his guilt, but was also sent to the Magistrate.

The witness No. 2, Chonchal burkundaz corroborates the darogah's above deposition. The witness No. 12, Mohur Sheikh proves the apprehension of prisoner No. 15, with the property Nos. 15 and 16.

The witness No. 14, Syefolla burkundaz proves the apprehension of prisoner No. 16, with the property No. 17.

The witnesses* Nos. 17, 18, 22 and 35, prove that the dacoity took place, that Haradhun and Ramlall were wounded and that the dacoits were attacked; Romun also proves that he wounded one of the dacoits with a spear.

* No. 17, Nilkunt.
,, 18, Roghoonath.
,, 22, Ramlall.
,, 35, Romun.

The witness No. 21, Romanath mohurrir proves that he took the prosecutor's deposition and the list of stolen property before he knew of the apprehension of the prisoners; he also proves that the prisoner No. 9, freely and willingly confessed; and the *sooruthal* of the wounds of Haradhun and Ramlall, neither of which wounds endangered their lives, though that of Haradhun was severe.

The witness No. 19, Haradhun was absent in the jail hospital four miles distant from the kutcherry and as, I was assured, he could come only in a *doolee*, I dispensed with his presence.

The witnesses† Nos. 23 and 24, prove that the prisoners Nos. 9, 11, 12, 13, 15 and 19, confessed freely and voluntarily before the darogah.

† No. 23, Soodhakristo Dass.
,, 24, Toilockonath.

The witness No. 25, Herah Shah supports the darogah's evidence regarding the confessions of prisoners Nos. 10, 17 and 18, and proves that they confessed freely and voluntarily.

The witnesses‡ Nos. 29 and 31, prove that the prisoners Nos. 9, 10, 11, 12, 13, 17, 18 and 19, confessed freely and voluntarily before the Magistrate.

‡ No. 29, Ahedoollah.
,, 30, Jugdish.

The above witnesses Nos. 17, 18 and 37, Madhub Mundle prove the property to belong to the prosecutor.

The witness No. 38, Koonjudass proves that he saw five or six men in the early morning passing through the village with a bundle, and gave information at the thannah.

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The prisoner No. 12, is a sepoy (as also are Nos. 14, 15 and 20,) of the Nawab of Moorshedabad and No. 19, is a Sowar belonging to his establishment; No. 14 was a Sepoy of the late 19th Native Infantry and No. 20 of the late 7th Native Infantry but he received his discharge before the mutiny of that corps in July last. There is not the slightest doubt in my mind that the confessions of the above confessing prisoners were really made by them; those before the Magistrate too are full, ample and consistent, and I believe they all relate truly that the respective prisoners were at the dacoity. The prisoners Nos. 10, 12, 17 and 19, pointed out before the Magistrate the whole of the prisoners (except No. 16,) as their accomplices, and though such statements are not direct evidence, yet by the ruling of the Sudder Nizamut in the case of Government *versus* Herdyal &c. of 21st January, 1857, they may be considered in evidence.

I convict the prisoner No. 9, Edoo Sheikh, of having committed this dacoity with wounding, upon his mofussil and foujdaree confessions, corroborated by the finding of property No. 1, in his possession.

I convict the prisoner No. 10, Baboo Sheikh, of the same crime upon his mofussil and foujdaree confessions, corroborated by the finding of property Nos. 2 to 6 upon him.

I convict the prisoner No. 11, Meahjan Sheikh, of the same crime upon his mofussil and foujdaree confessions, corroborated by the finding of property No. 9, upon him.

I convict the prisoner No. 12, Teelucklall Lalla, of the same crime upon his mofussil and foujdaree confessions, corroborated by the finding of property Nos. 11, 12 and 13 upon him.

I convict the prisoner No. 13, Shewburt Kahar, of the same crime in consequence of its being proved that he was seized with Nos. 11 and 14, prisoners; that he acknowledged in the mofussil that he was with the prisoner No. 19; that he was his servant; and that he acknowledged in the foujdaree Court that he received the property Nos. 7 and 8, from the prisoner No. 10, knowing that he had obtained it by this dacoity, and that he was pointed out before the Magistrate as one of the dacoits by the prisoners Nos. 10, 12, 17 and 19.

I convict the prisoner No. 14, Heeralall Pattuck, of the same crime in consequence of its being proved that he was seized with Nos. 11 and 13, prisoners, with a sword and an iron flail (a weapon of a most murderous and infernal nature) wrapped up in the property No. 10, a quilt, that he acknowledged he had received the quilt from the prisoner No. 18, in the mofussil, that he declared in the foujdaree that that quilt was his own, which is proved however to belong to the prosecutor and which he does not claim in this Court, and that though he denies his mofussil signature to his answer, and declares that in the foujdaree he was forced to sign a statement he did not make, which

forcing however he does not attempt to prove; yet it is proved that he did sign his mofussil statement of his own accord, and finally in consequence of his being unable to prove his defence, and his being pointed out before the Magistrate as one of the dacoits by Nos. 10, 12, 17 and 19.

I convict the prisoner No. 15, Hurnam Singh (who called himself Hurlall Singh in the mofussil) of the same crime upon his mofussil confession, and from its being proved that he was seized with the two swords and the property Nos. 15 and 16; from his being pointed out before the Magistrate as one of dacoits by prisoners Nos. 10, 12, 17 and 19, and from his failing to prove his defence.

I convict the prisoner No. 16, Oomrow Singh of knowingly having in his possession property obtained by this dacoity, in consequence of its being proved that the property No. 17, was found upon him, and that property being clearly identified by the prosecutor and witnesses of having been part of the property plundered, while the prisoner's statement of its being his own property is not proved, and he named as his *sole* witnesses to its being his property, the prisoner No. 18, and one Bhikoo, both of whom are stated by the prisoner No. 10, (who implicated this prisoner No. 16,) to have been the people who got up this dacoity.

I convict the prisoner No. 17, Soleman Habshee of this dacoity upon his mofussil and foujdaree confessions, supported by his being seized with a heavy axe, and his being pointed out as one of the dacoits by the prisoners Nos. 10, 12 and 19.

I convict the prisoner No. 18, Faqueer Sheikh, of the same crime upon his mofussil and foujdaree confessions, supported by his having been seized with a fresh wound upon his person, and his being pointed out by the prisoners Nos. 10, 12, 17 and 19, as one of the dacoits.

I convict the prisoner No. 19, Ichabar Oopadia, of the same crime upon his mofussil and foujdaree confessions, and from his having been pointed out as a dacoit by the same prisoners.

The prisoners before me deny their mofussil and foujdaree confessions, but their denials are useless.

I sentence the whole of the prisoners from Nos. 9 to 19 under Regulations XVI. of 1825 and L. of 1803, each to (16) sixteen years' imprisonment with labor in irons in banishment.

The darogah and Chunchal burkundaz have behaved extremely well in this case and I recommend them to the Magistrate for a handsome reward, I direct a reward of 10 rupees be paid to the witness No. 12, Mohur Sheikh for his gallantry in apprehending the prisoner No. 15.

N. B.—With reference to prisoner No. 20, Chummrew Singh a reference has been made to the Nizamut Adawlut in my letter No. 125, dated 27th April, 1858.

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Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) Both the Magistrate and Sessions Judge have evinced great care in the trial of the prisoners. Against the prisoners Nos. 9, 10, 11, 12, 17, 18 and 19, the evidence, including their own confessions, which are proved to have been voluntary, is clear and consistent, and establishes their guilt beyond a doubt.

The prisoners Nos. 13, 14, 15 and 16, are convicted upon violent presumption as accomplices in the perpetration of the dacoity with wounding. I see no reason to interfere with the sentence passed upon them all by the Sessions Judge and reject their appeal.

The local investigation leading to the apprehension and conviction of the prisoners is very creditable to the Police.

PRESENT:

H. T. RAIKES AND A. SCONCE, ESQS., *Judges* AND D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT

versus

BAMA KYBURTNEE (No. 1,) ROOPCHAND HAZRA (No. 2,) AND MUDDHOO CHOWKEEDAR (No. 3.)*

24-Perghs.

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Case of BAMA KYBURTNEE and another.

In this case, one prisoner is convicted of wilful murder, but the statements made by a second prisoner are held not to be confessions and he is acquitted.

CRIME CHARGED.—1st count, prisoners Nos. 1 and 2, wilful murder of Harani Chookree, daughter of the co-prosecutor Bhojobun Kulloo; 2nd count, prisoners Nos. 1 and 2, accompliceship in the above; 3rd count, all three prisoners Nos. 1, 2 and 3, privity to the above; (4th) additional count, (prisoner No. 2,) accessaryship after the fact in the above murder of Harani Chookree.

Committing Officer.—Mr. J. J. Grey, Magistrate of Howrah.

Tried before Mr. J. E. S. Lillie, Additional Sessions Judge of 24-Pergunnahs, on the 17th April, 1857.

Remarks by the Additional Sessions Judge.—Harani, a girl of about ten years of age, covered with gold and silver ornaments, left her father's house on the morning of the 15th of February last. She did not return, and no tidings of her were received during the course of the day.

Her father deposes that on the following morning he heard from a child of prisoners Nos. 1 and 2, that the female prisoner had murdered his daughter. He further deposes that he also heard from witness No. 15, that he had seen the female prisoner

* Acquitted by the Lower Court.

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coming from the direction of an unused tank with her clothes wet.

The tank was searched,* and Harani's body was found. The tank was covered with weeds, and the body had been deposited in shallow water under some weeds. The body was stripped of ornaments.

* Wit. No. 3, Brojo Kulloo.
,, ,, 5, Tripoorachurn Bose, Gomashta.
,, ,, 8, Parbutty Kulloo.

Suspicion fell upon prisoners Nos. 1 and 2, eventually they both confessed, and the female prisoner produced† all the missing ornaments from various places of concealment in and about her house.

† Wit. No. 5, Pripoorachurn Bose.
,, ,, 6, Dinobundoo Khan, Gomashta.

The substance of the confession of the female prisoner may be thus stated: the girl came to the house when she and her husband were at home; her husband went out, and she and the girl was left together; the girl leant up against the wall, where a curry stone had been placed; the stone fell upon the girl, and she, prisoner, then pressed the stone upon the girl's throat until she died. The prisoner goes on to say that she placed the body in a sack; and that during the night, having stripped it of its ornaments, she dragged it to the tank and pushed it into the water. The prisoner affirms distinctly that she killed the girl for the sake of her ornaments. The prisoner repeated the above statement before the Magistrate with this variation, that she asserted that death was caused by the curry stone accidentally falling upon the girl.

Prisoner No. 2, confessed in the mofussil and before the Magistrate, that he was present when the girl came to his house; that he noticed her jewels; that he left his house and did not return until the night, when his wife told him what she had done; that he saw and examined the body; and that on the following morning he went off to the house of his father-in-law.

The Civil Assistant Surgeon proves that he examined the body of the girl; that she had been in a healthy condition; and that death was caused by either suffocation or drowning. "The tongue was protruded between the front teeth, and tightly pressed between them." A symptom generally to be found in death caused by suffocation. The Civil Assistant Surgeon is further decidedly of opinion that death could not have been caused by the curry stone falling upon the girl.

The defence of the female prisoner is, that she saw a body floating upon the tank; that she took off ornaments from the body; that as she was going home she met Harani's father, and that she offered to give up the ornaments to him, but that he told her to take care of them for him. Prisoner No. 2, avers

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that he was absent from his home, and knew nothing of the matter until he was apprehended.

The *futwa* of the Law Officer convicts prisoners Nos. 1 and 2, upon violent presumption. The former of the wilful murder of the girl, and the latter of being an accessary after the fact; and declares them both liable to *akoobut.*

The admission of the female prisoner, that she killed the girl for the sake of her ornaments, is most conclusively confirmed by the production of those ornaments. Seeing no extenuating circumstance, I would recommend a capital sentence.

Although there may be some doubt regarding the precise measure of participation by prisoner No. 2, yet his complicity in the crime is most fully established. He admits that he was present when the girl came to his house. He does not prove where and how he passed the day. He admits that he was cognizant of the act during the night. The fact of his absconding is a most strong presumption against him. I would recommend that he be transported for life.

The female prisoner is said to be in a state of pregnancy.

The present case affords another illustration of the extreme culpability of the practice of allowing children to wander about covered with jewels.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes, A. Sconce and D. I. Money.)

Mr. D. I. Money.—There can be no doubt whatever from the whole evidence in this case of the guilt of both prisoners. The only question is the extent of the guilt of each. Did the woman murder the child, and the man aid and abet? Did he become cognizant of the murder after it was committed? Did he murder the child, the woman helping or looking on? All these questions arise from the evidence; and they arise because the woman's confession is not entirely true, and creates, on the very face of it, the suspicion, that she is throwing the guilt upon herself alone and screening the prisoner. It would not be right, *upon the evidence*, to sentence the man to suffer death, as well as the woman. There is a doubt of the extent of *his* guilt. *She* is convicted by her own admission, and the production of the ornaments, whatever may have been his share in the act or his connection with it after. The doubt therefore regarding him could afford no extenuation of her guilt, *as established by the evidence*, and would not make her an object of mercy, otherwise I would sentence both to transportation for life. As it is, I think the Sessions Judge, with reference to what is proved by the evidence, has made a right distinction between the prisoners, as to the guilt and punishment of each; and I would, therefore sentence them both, as he recommends, the prisoner No. 1, Bama Kyburtnee, to suffer death, and the prisoner No. 2, Roopchand Hazra, to transportation for life.

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Mr. A. Sconce.—The prisoner Bama in the confession made by her before the Darogah on the 17th February last, that is, on the second day following the disappearance of the child Harani, said that as Harani sat in her house, leaning on the stone used for pounding spice, the stone fell over on her and that she, prisoner, pressed the stone on her neck for about one "*dund*" (twenty minutes) till she died. This was about 2 in the afternoon. Prisoner continued that she concealed the dead body in the house, covering it with some loose earth and a sack; and that after nightfall, stripping off the child's ornaments, she sank the body in a tank, situated some four *beegahs* from her house.

The Sessions Judge says that the prisoner repeated this statement before the Magistrate, with the variation that she asserted that death was caused by the curry stone accidentally falling upon the girl. This, however, is not a strictly exact account of the statement made by Bama to the Magistrate. On that occasion, the 18th February, Bama, no doubt, said that as the child's foot touched the stone it fell on her neck; but she added that Harani began to try to cry out *(kemun!)* and that, for fear she should be accused, she held down the stone, and the child died. This, Bama repeated on the 19th February.

Upon these two confessions I concur in the conviction of Bama for the wilful murder of the girl Harani, and in the sentence proposed. At the trial she adduced no witnesses: and no suspicion whatever attaches to the fidelity of the proceedings of the police, and the trustworthiness of the confession delivered to the Darogah; while the tenor of both confessions is corroborated by the restoration, by the prisoner, of the deceased child's ornaments.

I am not satisfied, however, of the guilt of the other prisoner, Roopchand, husband of Bama. The Sessions Judge describes the statements made by this prisoner as confessions; but they appear to me *not* to be confessions. To the Magistrate, Roopchand, examined on the 18th February, said, that four days ago about 2 in the afternoon, he returned from weeding his field; that, as he sat at his dinner, Harani came in; that he asked Harani to bring from her house a betel-nut, but as her father was there, she refused; that he then went out, and did not return till six "*dund*" of the night; that his wife told him she had done something wrong; and, on his asking for an explanation, she said that on the stone falling on Harani's stomach, she had died, and she (Bama) had concealed the body in a tank; that he was very angry and ate scarcely any thing; that about four in the morning, he was awakened by his wife sharpening a *dao*, and fearing she meant to kill some one, herself, him, or their boy, he did not afterwards sleep; that he

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told her he could never look at her again, and in the morning went off to her father's house in another village.

The statement made before the Darogah by Roopchand nearly corresponds with the preceding. He admits no concern whatever with the murder; on the contrary, he says he was shocked at his wife's conduct and abandoned her. The Sessions Judge, from the 7th paragraph of his letter, supposes that Roopchand confessed that "he saw and examined the child's body." But on the contrary, as is above seen, he said Bama told him she had sunk it in the tank, *before his return;* and so, before the Darogah, after saying that his wife told him she had taken the body to the tank, he added that with a light he looked at the spot, where, within the house, his wife said, the body had been concealed and saw the bag used to cover it, but no blood.

From such language, it seems to me, we cannot extract a confession of guilt. We cannot, I think, convict Roopchand of any crime, because he said he heard from his wife that she had done something wrong, and had left his home in consequence. Even the confessions of Bama corroborate the statement of her husband. She says most explicitly that he did not return home, till some time after she had sunk the child's body; and that Roopchand took any part whatever in connexion with the murder, we have no evidence. We cannot import into Roopchand's statement words which are not there; nor can we construe the words, which are there, in a sense which he did not intend.

I would acquit Roopchand.

Mr. H. T. Raikes.—This case has been referred to a third Judge in consequence of a difference of opinion as to the guilt of the prisoner Roopchand; Mr. Money considering him to be an accomplice in the murder charged, and Mr. Sconce holding the evidence altogether insufficient for his conviction. As both Judges concur in the conviction and sentence proposed for Bama, I need not refer to her case.

I have attentively considered the statements made by Roopchand both before the police on the 17th and before the Magistrate on the 18th of February; and agree with Mr. Sconce that no confession of guilt is to be found in them. So far as those statements go, they entirely exculpate the prisoner; and I fail to see any reasonable ground from surrounding circumstances for doubting their sincerity.

The Sessions Judge has clearly misunderstood their purport as to the prisoner having seen the body, as supposed by him. The female prisoner distinctly states that she had removed it before the return of her husband; and he merely describes himself as examining the spot, where she said the body had been concealed by her in the house; and his observing the sack, but no marks of blood. There is nothing in the record to disprove

either the statement of the wife, that she alone committed the murder, or that of the husband that he never saw the body, nor was cognizant of the deed beyond what he heard from his wife on the subject.

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The absence of the husband from his house when the murder was discovered, is, in my opinion, no sign of guilt. He would not have gone to his father-in-law's house, if his intention had been to abscond; and quietly remained there till he was apprehended. Had he committed the murder, and wished to conceal it, it is not likely he would have left all to the discretion of his wife, in the event of suspicion falling upon him in his absence; with the jewels secreted about his own homestead. I entirely concur with Mr. Sconce in acquitting the prisoner.

PRESENT:

A. SCONCE, Esq., *Judge*, AND D. I. MONEY, Esq., *Officiating Judge.*

GOVERNMENT

versus

PROTABCHUNDER DOSS (No. 2,) PHOOLKISHORE DOME CHOWKEEDAR (No. 3,) AND HELOO SHEIKH (No. 9.)

Moorshedabad.

1858. June 24. Case of PROTABCHUNDER DOSS and others.

Three prisoners convicted of riot attended with culpable homicide and sentenced by the *Nizamut Adawlut* to seven years' imprisonment with labor and irons; the case having been referred by the Ses-

CRIME CHARGED.—1st count, with wilful murder of Madan Mundul; 2nd count, riot attended with the wilful murder of Madan Mundul, wounding of Ramjeebun Mundul, Ramsoondar Mundul and Ramlochun Mundul and plundering property of Gungadhur Sircar valued at 80 Rupees, of Nuddearchand Mundul, 26 Rupees, of Tincowree Mundul, 46 Rupees, of Guddadhur Shaha, 150 Rupees, and of Dindoyal Sircar, 240 Rupees.

Committing Officer.—Mr. W. C. Spencer, Officiating Magistrate of Moorshedabad.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 6th May 1858.

Remarks by the Officiating Sessions Judge.—These prisoners were committed with prisoners No. 4, Woodhub Haree, No. 5, Okcroor Sircar, No. 6, Sreekunto Sing, No. 7, Dola Bagdi, No. 8, Poran Haree, No. 10, Ashroo Sheikh and No. 11 Coora Mullick who are acquitted.

This case arose in the jurisdiction of the late Deputy Magistrate of Khandra, and was taken out of his office, and committed by the Officiating Magistrate after the Deputy Magistrate's death.

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Sessions Judge who, differing with his law officer, proposed to acquit the prisoners.

On the 22nd January last, while the Deputy Magistrate was at Khandra, Doolab chowkeedar reported at 4 P. M. that this riot had occurred; the Deputy Magistrate immediately took his deposition in which he stated that the villagers of Mankehar having determined to prevent Ramjeebun Mundul witness No. 1, and his brothers from settling in the village, had that day attacked them, wounded Ramlochun witness No. 3, and Ramsoondar witness No. 2, and had killed the above *Ramjeebun;* he named no names and did not make mention of the property of any of the parties noted in the charge having been looted, and the Deputy Magistrate asked no question, but started for the village; previous to his departure, however, the above Ramlochun and Ramsoondar presented a petition mentioning the riot and destruction of their house, but not the murder of any one, their depositions were not taken then, but the Deputy Magistrate on reaching the village took the deposition of their mother Dassee Mondolanee and she named the prisoner No. 2, as having ordered the riot stated, that all the rioters assaulted her sons, that her son *Madun Mundul* having fallen down was trampled upon by the prisoner No. 3, and that she had recognized only the prisoners Nos. 3, 9, and the absent defendants *Golamee* and *Kangalee*, she subsequently, however, on the 24th March, stated to the Magistrate, that she had not recognized the prisoner No. 2, but had heard that he had ordered the riot.

The same evening the Deputy Magistrate himself wrote down the deposition of Ramjeebun Mundul witness No. 1, he deposed to the prisoner No. 2 having objected to his building a house he had commenced, and stated that on the 10th Magh, equivalent to the 22nd January, early in the morning, that prisoner with other people having come to him and threatened him if he persisted, that about 10 A. M. he with about two hundred or three hundred *lattials* attacked him, tore down the house he was building, wounded him and his three brothers Ramsoondar, Ramlochun and *Rammohun*, killed his brother Madun Mundul and looted the houses of those named in the 2nd count. He named sixty-five defendants, but of the prisoners now present he only named Nos. 2, 3, 9, 10 and 11, and stated that he had also given into the charge of a burkundaz three defendants whom he had seized, *but whose names he did not know*, that Nos. 8, 9, *Kistolall*, *Golamee*, *Hera Mullick*, *Kubeer Mundul*, and *Ramlall* Bishwas had killed his brother Madun by striking him with *lattees*, and that No. 3 had stamped upon his neck after he had fallen on his *face*, that Kistolall was the first to strike the deceased and had also struck him (the witness). On the 24*th March*, he added to the Magistrate, that the prisoners Nos. 5, 6 and 9, were the three parties he had given over to the burkundaz, (a gross contradiction to his above deposition

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to the Deputy Magistrate, as he then said that he had not known the names of the three men, but had already *named* No. 9, as one of the strikers of the deceased) that his brother Ramlochun had seized No. 11, and given him to the police (denied by Ramlochun before me) that No. 5, had struck him (the witness) and that No. 6, had carried off a *wheel* of his cart. I must here remark that the Deputy Magistrate took no steps whatever to learn who the three men, thus said to have been seized, were.

Before me he varies the above statement considerably, he leaves out the names of many he had named before, adds those of sixteen others as per margin,* names the whole of the prisoners, assigns special acts to each of them, asserts that No. 8, *Golamee* and *Kangalee* had struck him, that Kistolall first struck the deceased with a *lattee* on the *head*, then No. 3 on the right thigh, then No. 9 gave him a shove with a *lattee*, then No. 4 hit him on the calf of the leg on which he fell on his face, then No. 7 began to stamp upon his back and Nos. 10 and 11 on his legs and the back of his neck, that No. 6 carried off the *whole* cart (and not merely a wheel) and that all the rioters then looted the houses, and with the exception of Nos. 3 and 9, he does not state that the other six defendants whom he named to the Deputy Magistrate as having struck the deceased, did strike him.

* Brimaker.
Nora.
Babun Mundul.
Juddoo.
Hullodhur.
Madhob.
Ramadhun.
Gogunsha.
Ushruff.
Sonatun.
Milon.
Madhob (2d.)
Ashar Pal.
Rameshwar.
Brijo.
Kartick.

On the 23rd January he presented a petition to the Darogah saying that he had obtained intelligence that *Koilash, Lall Khan* and *Panchoo*, and others had some of the looted property in their houses; the Darogah searched them and found in that of Lall Khan and Panchoo (brothers) an old gun, which Dindoyal witness No. 10 recognized as having been looted from his house, Lall Khan confessed to having snatched it from one of the rioters and witnesses No. 4, Gungadhur and No. 11, Hurreelall swore before the foujdary that they recognized it as Dindoyal's gun and also that they had recognized those two men among the rioters, but the Magistrate on the 5th April, asserting that he did not consider the evidence against Lall Khan, satisfactory, acquitted him, and yet sent those very three witnesses up to this Court to prove the charge of the calendar against the prisoners! he does not, however, state why their evidence against them should be considered more trustworthy than it was against Lall Khan.

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On the 24th March, the Magistrate re-examined the mother of Ramjeebun, the above Dossea, but she asserted that she could not *now* see and therefore could recognize none of the prisoners; she was asked no questions regarding this sudden blindness and no enquiries on the point were made, and although according to the Deputy Magistrate's *roobakaree* of the 1st February (to be detailed hereafter) she pointed out to him No. 4, prisoner, she was not sent up as witness.

The police, the Deputy Magistrate, and the Magistrate failed to examine the brother, *Rammohun*, who was said to have been wounded and present at the riot, or his nephew Juggeshwar who, by the petition of Ramlochun and Ramsoondar above alluded to, was also present, and neither of them have been sent up as witnesses.

By the Darogah's report of the 26th January, it appeared that the witness Bheem Ghose No. 15, having recognized *Koilash Haree*, and Ramsoondar having recognized *Mookta Singh*, *Lall Sheikh* and *Ramlall Koibart*, they were all four apprehended, but though Ramsoondar in his deposition to the Deputy Magistrate recognized all four, Ramlochun recognized *Mookta* and *Koilash*, and witnesses No. 8, Guddadhur No. 16, Roopchand, and No. 17, Kesub recognized *Ramlall*, yet it appears by the Magistrate's *roobakaree* of the 19th March, that the Deputy Magistrate acquitted them all. The Magistrate does not shew why the evidence of those witnesses should be believed by this Court against these prisoners any more than it was against those four persons.

In direct opposition to the testimony of Ramjeebun regarding his having seized and given over prisoners Nos. 5, 6 and 9, to a burkundaz, the Deputy Magistrate in his *roobakaree* of the 1st February, recorded that during the night of the 22nd January, he heard that Ramjeebun had made over some persons to the Darogah, and on the next morning on questioning the Darogah, he shewed him three or four men (none of whom the Deputy Magistrate named) and that, the villagers crowding around, Ramjeebun's mother saw the prisoners Nos. 4 and 9 amongst the crowd, and pointing them out, loudly insisted that No. 4, had killed her son Madun, as therefore No. 9, was amongst the crowd he could not have been one of the three said by Ramjeebun to have been made over to the burkundaz by him.

The witness No. 2, Ramsoondar deposed before the Darogah, (in a deposition dated by the Darogah, the 22nd January, but which was not sent up till the 27th idem, and which the witness declares to me he gave on the 23rd idem) to having recognized forty of the persons named by Ramjeebun and thirty-five others, and amongst them he named all the prisoners except No. 4. In his petition to the Deputy Magistrate on the 22nd January, he named only twelve persons, amongst whom he

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named only Nos. 2, 3, 4 and 7, of the prisoners and left out in his *deposition* the names of *Rama*, *Premdoss*, and *Shimonto* whom he named in the petition. In the deposition he asserted that *Ketro Mundul*, *Rameshwar*, Binod Pall, and another *Ketro* had struck him and that he heard from Doolab chowkeedar after giving his petition that Madun had been killed, he having run off to give information after having been himself struck; but as Doolab reported that Ramjeebun had been killed and did not mention Madun in his deposition on that date, it is odd that he should have told the witness of Madun's death, and though the assault is said to have occurred at 10 A. M. and the Deputy Magistrate was only three and three quarter *coss* distant, yet the witness did not reach the Deputy Magistrate till 4 P. M., therefore had Madun really died *in this alleged riot* the witness must have learnt it previous to his starting off for the Deputy Magistrate.

This witness considerably varied his above deposition, both in that given before the Deputy Magistrate on the 29th January, and in that before me. He told the Deputy Magistrate that *Kistolall*, *Ketro*, and Rameshwar had struck him, and No. 7 had struck him with a brick, that Nos. 3, 4 and 9, *Kisto*, *Golamee* and *Kangalee* had struck the deceased and he named all the prisoners, except No. 6, but on the 1st February, before the Deputy Magistrate he failed to point out Nos. 5 and 10, and did point out *Lall Khan* and *Punchoo*, neither of whom he had previously named, while *Koilash*, *Mookta* and *Ramlall Koibart* whom he had named, he failed to point out. Before me, he names all the prisoners, states that he himself was struck by Nos. 4, 7 and 9, and *Ketro*, does not recollect whether *Kistolall* hit him, and names only prisoner, No. 3, and *Kistolall* as the persons who struck the deceased No. 3 on the back and *Kistolall* on the head.

The witness No. 3, Ramlochun, in his deposition of the 23rd January, (not 22nd as stated by the Darogah) also sent on the 27th idem, named many persons, but only Nos. 2, 3 and 7, of these prisoners, and stated that on his return from the Deputy Magistrate his mother had told him that the prisoner No. 2, *Kubeer Mundul* and *Ramlall Biswas* had killed the deceased, but his mother in her deposition that day (the 22nd) said No. 2 had *ordered* the riot and did not name *Kubeer* and Ramlall Biswas at all. Before the Deputy Magistrate on the 29th January and before this Court, he varies considerably his statement. Before the Deputy Magistrate he added that the prisoner No. 2, and *Golamee* had struck him with a *lattee* and *Kangalee* with a brick, and stated that *Kistolall* had struck the deceased; he also identified besides Nos. 2, 3 and 7, the prisoners Nos. 4, 8, 9, 10 and 11, as having recognized them

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during the riot, none of whom he had named in his previous deposition.

Before me, he says he was beaten by prisoner No. 3, and *Golamee* and that *Jamal Sheikh* had struck him with a brick, and that he saw Nos. 7, 8 and 9, and ***Kistolall*** strike the deceased.

The following statement will shew the discrepant manner in which the several prisoners were said by the several witnesses to have been recognized by them.

Witnesses who recognized before me.	Prisoners.	Witnesses who recognized in the Foujdaree.
By all the witnesses Nos. 1 to 17.	2	By all the witnesses Nos. 1 to 17.
Do.	3	Do.
1, 2, 3, 6, 7, 10, 11, 13, 14, 15, [16, 17	4	2, 6, 11, 13, 14, 15, 16
1, 2, 4, 13, 14	5	1, 2, 4, 8
1, 2, 4, 6, 7, 8, 10, 13, 14,	6	1, 2, 4, 8, 10
1, 2, 3, 6, 8, 10, 13, 14, 15	7	2, 3, 13, 14, 15
1, 2, 3, 7, 8, 13, 15	8	2, 3, 15
1, 2, 3, 4, 6, 7, 8, 9, 13, 14, 15	9	1, 2, 3, 6, 8, 9, 13, 14, 17
1, 2, 3, 7	10	1, 3, 15
1, 2, 3	11	1, 2, 3, 15

The above witnesses vary considerably as to how, on what part of the body, and by whom the deceased was struck.

The witness No. 5, appeared to be such an idiot when giving his deposition, that I discharged him.

The witness No. 12 was not examined.

The witness No. 4, Gungadhur Sircar declares that he saw the prisoner No. 3, ***Kubeer***, ***Ramlall Biswas***, *Golamee*, ***Brimo*** and *Gungashagur*, strike the deceased with *latties* and ***kicks.***

The witness No. 6, Nuddeachand declares he saw the prisoners Nos. 3, 4 and 9, ***Kubeer***, ***Ramlall Biswas***, ***Gungashagur*** and *Golamee* and ***Brimo***, strike the deceased.

The witness No. 8, Guddadhur declares that he saw prisoners Nos. 6, 7, 8 and 11, standing there, but doing ***nothing***, and Nos. 3 and 9, ***Kubeer***, ***Ramlall Biswas*** and ***Kristolall***, strike the deceased, and that the rioters looted first the house of witness No. 4, then of No. 10, 7 and 6 in succession.

The witness No. 7, Tincowree was only present when his house was looted, the rioters first looted his house and then those of witness Nos. 10, 4 and 8 in succession.

The witness No. 9, Romonee Bystoba declares she saw prisoners Nos. 3 and 9, Golamee and Kangulee kicking the deceased, but mentions nothing of his having been struck.

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The witness No. 10, Dindoyal declares he saw prisoner No. 3, Kubeer, *Ramlall Biswas*, *Brimo* and *Gunga*, strike the deceased, and that the rioters looted the houses of Nos. 6, 7 and 4 in succession and then his house.

The witness No. 11, Hurree declares he saw prisoner No. 3 strike the deceased on the head, and No. 4 on the back and that *Kubeer, Ramlall Biswas, Brimo* and *Gunga* struck him.

The witness No. 13, Shonatun though naming prisoner No. 4, pointed him out to me as *Dallob* instead of Udob, and declares that he saw the prisoners Nos. 3, 7, 8 and 9, *Golamee* and *Kristolall* strike the deceased, and though he was standing seven yards off, he did not know whose house was first looted!!

The witness No. 14, Jugoobundoo declares he saw the prisoners Nos. 3, 4, 7 and 9 Golamee and *Kristolall,* strike the deceased.

The witness No. 15, Bheem says the same, but adds that the prisoner No. 8 also struck the deceased.

The witness No. 16, Roopchand declares he saw the prisoners Nos. 3 and 4, Golamee and Kristolall driving the deceased before them, but says nothing of anybody having struck him.

The witness No. 17, Kesub declares he saw the prisoners Nos. 3 and 4, and Golamee strike the deceased, and that one *Shonaton's* house was also looted!

In the Foujdaree the above witnesses varied their above statements, and did not mention the same parties as doing the same actions.

It appears from the proceedings that on the first day of investigation, the day of the occurrence, (and on which therefore if there was any truth at all in the case, the real particulars were most likely to have been mentioned) the only three documents bearing on the case that were taken, were the petition of Ramsoondar and Ramlochun, and the depositions of Ramjeebun and his mother, but the above witnesses as already shewn, do not at all support the particulars in those documents, as to the names of the person said to have done specific acts nor to the acts themselves, and it was not till the *next* day that the names of most of these prisoners appeared in the deposition of Ramsoonder.

On numbering up merely the pots and pans mentioned in the various lists of the alleged looted property, I find that they are no less than two hundred and thirty two of them, and yet with the exception of the prisoner No. 3, (whom the witnesses Nos. 29, Priothum and 32, Golam Ghose say they saw with one brass vessel in his hands) not one of the witnesses can mention a single rioter whom they had seen with any of the looted property

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and yet such property as pots and pans is not very easily concealed when being carried away. One of the articles too included in the list presented by Ramjeebun is "*one bis of dhan;*" if the looting was true it is perfectly impossible that such a quantity of *dhan* could have been carried away without the witness being well able to see and name who took it. I may here remark that, except Ramjeebun, who requested a few persons' houses might be searched, none of the other injured people made any such request.

The Civil Surgeon in his deposition states that, with the exception of four *very slight* marks of blows on the body of the deceased, viz. one on the cheek, one on the front part of the leg, and two on the chest, there were positively *no* marks or wounds of any description; this statement at once shews the falsehood of the evidence for the prosecution, for the witnesses speak of blows on the *head* and *back* with heavy *latters* which, if true, *must* have left marks, and do not mention any blows on the front of the body. The Civil Surgeon further states that the deceased died from congestion of the brain and effusion of blood upon it, that this may have occurred spontaneously or by severe stamping on the back of the neck, but that there was no mark on the back of the neck and the above four marks on the cheek, chest and leg *could not* have caused the congestion and effusion.

The witnesses Nos. 1, 2 and 4, declare the deceased fell on his face and was kicked, and stamped upon, on his back, legs and back of neck, while the witnesses Nos. 14, 15, 16 and 17, declare he fell on his *neck* and was kicked and stamped upon, on the *front of his neck* and his *stomach*, yet it appears that in not one of those places was there the slightest mark of injury and while the witnesses Nos. 1, 2 and 4, declare that the prisoner No. 3, thus kicked and stamped, the witnesses Nos. 14, 15, 16 and 17 mention other persons as having done it.

The Law Officer gives a *futwa* against the prisoners Nos. 2, 3 and 9. No. 2, he convicts of ordering a riot in which Madun died, his brothers were wounded and the property of the parties named in the calendar was looted, and Nos. 3 and 9, of being participators and accomplices in that riot. He acquits the other prisoners, and as I agree in their acquittal, they are immediately released. With the rest of the *futwa*, I totally disagree, and accordingly submit the case for the final decision of the Sudder Nizamut Adawlut regarding the prisoners Nos. 2, 3 and 9, whom I have directed the Magistrate to release on bail, pending the Sudder Court's decision.

The reasons given by the Law Officer in his *futwa* are quite untenable; he has quite overlooked the discrepancies, falsehood and improbabilities above commented upon, and indeed he appeared to have examined and compared very few of the proceed-

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ings and depositions in the Foujdaree with the depositions given here, and declares in the face of the Civil Surgeon's deposition that the deceased died from the effects of the stamping on his neck, though there were no marks whatever of such stamping and the evidence respecting the persons said to have stamped and the localities of such stamping are deposed to as above in such contradictory terms by the witnesses Nos. 1, 2, 4, 14, 15, 16 and 17. He declares that as the witnesses differ so materially as to the names of the persons who killed the deceased, their evidence on *that* point is not trustworthy, and yet by convicting the above three prisoners on the evidence of the *same* witnesses, he shews that he does believe them! It is quite impossible to pick out certain points to believe and certain points to disbelieve from the evidence of a number of witnesses who depose to a number of facts, some of which (as the striking especially) are on their very face falsehoods, and the law officer does not explain the *data* on which he has thus selected the points he considers proved. I am of opinion that the witnesses have lied from the very beginning, and that though there may have been some kind of disturbance, yet that neither the death of the deceased nor the looting of the houses occurred in it, and that the deceased having died spontaneously the case was suddenly got up from malevolent motives, and that even if there was any disturbance it is impossible to believe from the evidence of such witnesses that these prisoners were concerned in it.

The *animus* of the charge is apparent from the fact of the prisoner No. 2, having once before been charged in the Beerbhoom Court with a similar murder and acquitted, and from the fact that the prisoner No. 3 deposed some time ago to Ramjibun's having been concerned in a dacoity; this latter fact is elicited from my sending for the case of dacoity mentioned in that prisoner's foujdaree defence, and observing in the darogah's report in it dated the 30th January 1849, that the prisoner did charge Ramjibun on that date with having committed a dacoity in the house of one Madab Mookeerjee. The Magistrate does not appear to have inspected that case, and it certainly is no where mentioned in the record of this riot, that he did inspect it.

I consider that the prisoner No. 2 has proved his plea of an *alibi* on the day of the occurrence, and the remark of the Magistrate in the calendar that his guilt is presumable from the fact of his fleeing from Burdwan leaving his property behind him carries no weight, as from the Burdwan police report of the occurrence dated the 12th February last, it merely appears, that the police went to look for him in the lodging he was said to be occupying and not finding him took possession of a few trumpery articles, which the people there said belonged to the prisoner; and it is no proof of guilt that he

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wished not to be marched as a prisoner all the way from Burdwan. This prisoner in his defence in the foujdaree begged that the book of a certain stamp-vendor in Burdwan, from whom he had purchased stamp paper on the day of this alleged riot, might be sent for and inspected, but it does not appear that his request was attended to.

The prisoners Nos. 3 and 9 also plead *alibi*, and though their witnesses are ignorant people, and perhaps under other circumstances much credence could not be placed upon their recollection of the particular day on which they may have seen the prisoners at other places, yet in *this* case, I do not see why they should not be as much believed as the witnesses for the prosecution, who have so grossly varied their statements.

The law officer declares that the *alibi* of the prisoner No. 9 is not to be believed, as he was seized in his own house on the day of the occurrence; I can only state that this opinion is directly opposed to the late Deputy Magistrate's *roobakaree* of the 1st February, in which he said that on his being pointed out the *day after* the occurrence amongst the crowd, he himself ordered the darogah to seize him.

I am of opinion that the law officer's *futwa* shews a want of attention to the circumstances deposed to, a want of knowledge of the common rules of evidence and the dependance to be placed thereon, and a great want of proper judgment, which, together with the various absurd *futwas* he has given in other cases referred to the Sudder Court since my tenure of office here, and especially that in the case of Oodoygur *versus* Jankee Bewa in calendar No. 4, for October last reported in my letter No. 424 dated 31st idem, which was characterized by the Sudder Court in concurrence with my expressed opinion, as "unsound in judgment and puerile in matter," has not raised my estimation of his official qualities, indeed I feel that I can place no reliance upon any judgment he delivers.

I regret to add that I am extremely dissatisfied with the proceedings of the police and the police authorities in this case, the investigation from the very beginning was characterized by negligence and ignorance on the part of the police and the late Deputy Magistrate, and the committal by the Magistrate was a want of proper discretion, as had the same minute attention to the proceedings and depositions that I have paid, been paid by him, the discrepancies, falsehoods and improbabilities pointed out by me, would have been equally patent to him.

The darogah's proceedings were loose, incomplete, desultory and ignorantly conducted, and he has, by his own shewing, falsified the dates of the apprehensions of the prisoners, for which he received a *warning* from the Magistrate! and he has falsified the date of the depositions of Ramsoonder and Ramlochun

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and contrary to law he forwarded them to the Deputy Magistrate with his "*khatema*" report, instead of immediately after they were taken; he never took the deposition at all of one of the brothers Rammohun nor of his nephew Juggeshwur, although both were said to have been present at the riot, and I can nowhere find that he explained his reasons for such neglectful omissions, and instead of writing a brief history of the case and the manner in which the prisoners and others were apprehended, and the reasons that induced their apprehension, he has left everything to be discovered after diligent research, by this Court, the Magistrate's attention is particularly called to this paragraph.

I have to apologize for the length of this report, but I have been unable to embrace all its points in fewer words.

NOTE.—The Magistrate reports that the prisoners have been released on bail.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Sconce and D. I. Money.)

Mr. A. Sconce.—In this case, the Law Officer convicts three prisoners Protabchunder Doss Sirkar, Phoolkishore Dome Chowkeedar, and Heloo Sheikh of a riot attended with the homicide of Mudun Mundul and with the plunder of property; but the Sessions Judge dissenting, would acquit the prisoners. Both Law Officer and Sessions Judge concur in the acquittal of seven other prisoners who were tried at the same time.

Mudun Mundul and his four brothers, for reasons not clearly brought out, appear to have become objects of dislike to the villagers among whom they resided; and in consequence of that dislike, to have two or three times changed their residence. Latterly having procured some land in Manikahar, the five brothers were employed in erecting a house on this land when the attack, which forms the subject of this charge occurred. According to the evidence for the prosecution, in the forenoon of the 22nd January, Protabchunder Doss led a large body of rioters for the purpose of compelling Ramjeebun Mundul and his brothers to desist from building their house; and ordered the attack to proceed.

The brothers, being at work on the house, were assaulted; four brothers made their escape; but the fifth, Mudun, after being chased with blows for some distance by the rioters, fell or was knocked down on the ground; he was abused by blows and kicks, and was trampled upon; and he almost immediately died.

Two of the brothers, Ramsoondar and Ramlochun, proceeded immediately to complain of the attack to the Deputy Magistrate who was then at Khandra. They left Manikahar, for this purpose when the attack was still going on, and before they knew of their brother's death. About the same time, notice

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of the affair was also given by the chowkeedar Doollab whose report shewed that he had left one brother dead. In consequence of these reports, both the Deputy Magistrate and the darogah proceeded to the scene of the riot, and during the evening took down the depositions of Dassee, an old woman, the mother of the brothers, and of her eldest son, Ramjeebun.

The Sessions Judge has, in some material particulars, inaccurately reported this trial. He has not, I think, taken a correct view of the evidence; and he has incompletely examined several material witnesses.

In the 4th para. of his letter the Sessions Judge seems to assume that Ramsoondar and Ramlochun had not reached the Deputy Magistrate till after the chowkeedar had lodged his report of the riot; and to distrust the truth of the complaint, because the two brothers in their petition did not say that their brother Mudun had been killed. But the judge has overlooked the explanation given of this matter. Ramsoondar in the statement made by him to the Darogah on the 23rd January, and, again, in the deposition recorded by the Sessions Judge said, that he did not know of his brother's death till he heard of it from the chowkeedar Doollab at Khandrah.

Even Doollab was misinformed up to that time as to the person killed; in his report, he named Ramjeebun, not Mudun; but, both from the mistake of the chowkeedar and the inability of Ramsoondar to put him right, I see nothing but marks of a hasty and early intimation of the occurrence, certainly no indication of intentional concealment or misrepresentation with respect to the death of Mudun.

In the 11th para. of his letter, the Sessions Judge exposes what he conceives to be a mis-statement of one of the brothers Ramjeebun, with respect to the prisoner Heloo Sheikh; Ramjeebun said, that he had made over this prisoner to a burkundaz and the Sessions Judge quotes the Deputy Magistrate's *roobokaree* of 1st February to shew that Heloo was not under arrest on the morning of the 23rd January, but among the crowd looking on. This is a mistake. The Deputy Magistrate distinctly states that at the moment in question Heloo was in charge of a burkundaz; and that another man, Oodhub, was singled out from the crowd by the old mother of the deceased.

I might notice other imperfect recitals made by the Judge as to the witnesses' depositions; see, for example, the deposition of the witness Hureedoss which has been quite misunderstood by the Judge; (para. 24) but it is rather my purpose to state the impression which the evidence has made upon my own mind.

The riot was perpetrated by a great mob of people. No one pretends or could pretend to speak accurately as to numbers. There may have been two hundred or more engaged. The

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chowkeedar Doollab in his first information described the rioters as consisting of the whole, or to use his own words, sixteen annas of the village. Under such circumstances, witnesses may, in describing the occurrence, notice some men more prominently at one time than another; or may omit in their enumeration of one date, names mentioned at another date. As this case comes before us, there appears to me to be ample testimony to convict Protabchunder Doss as the director of the riot and Phoolkishore and Heloo as prominent agents. I see no point upon which a doubt can arise. First came the large mob, then the assault upon and dispersion of the brothers; then was Mudun chased and felled, and trampled on; and he died.

The prosecution has suffered considerably from the absence of the old woman Dassee, at the trial. We cannot therefore use her deposition taken before the Deputy Magistrate as direct evidence: but we may at all events refer to it as a check upon the evidence delivered at the trial. As soon as the Deputy Magistrate reached the village Manikahar, he examined Dassee, and her story is told intelligently, simply, and with much natural feeling. She saw her son chased and knocked down. As he lay he was again struck, as if he had been pretending, Phoolkishore, she said, trampled on his neck. Then seeing Mudun apparently dead, the rioters fled. The statement of the aged mother of the deceased is not, as I have said, evidence; but referring to it as a fresh account of the riot and its results, recorded under circumstances to which no suspicion appears to attach, it is found to sustain the evidence taken at the Sessions Court.

The body of the deceased Mudun was examined by the Civil Surgeon, who ascribed his death to the congestion of the vessels of the brain, and to the effusion of a small quantity of blood at the lower part of the brain. The Civil Surgeon could trace no injury likely to cause this state of the brain; and he was of opinion that a fall on the head might have caused it or that stamping with the foot on the nape of the neck heavily inflicted, might have caused it: or the congestion might have occurred spontaneously.

It seems to me, that the death of Mudun, following instantaneously upon the violent ill-usage which he received, should be held from the evidence to have been caused by that ill-usage.

The three prisoners set up *alibis*. For the prisoner Protabchunder Doss, it is made out that on the 7th May, that is, three days before the riot, he had gone to Keshubgunge in the Burdwan district; and was there twenty days; and he is made to volunteer to write a *kabooleeut* (not produced) for a person in whom he had no apparent interest. I see no reason to dis-

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trust the evidence for the prosecution, and I discredit the evidence given for the prisoners.

I would convict the prisoners Protabchunder Doss, Phoolkishore Dome, and Heloo Sheikh of the crime of riot attended with the culpable homicide of Mudun Mundul, and sentence them severally, to seven years' imprisonment with labor in irons. But the record must be made over for consideration by another Judge.

Mr. D. I. Money.—I concur with Mr. Sconce in his estimation of the evidence adduced on this trial, and his remarks upon the interpretation put upon it by the Sessions Judge.

The evidence, in my opinion, with a few discrepancies which do not materially affect its general consistency and weight, satisfactorily proves, that there was a riot, in which Phoolkishore and Heloo were actively engaged, and Protabchunder Doss was the instigator and leader; and that the brothers were assaulted, and Mudun Mundul was pursued, struck down and trampled to death. There can be no doubt upon the evidence that he met with his death from the treatment he received. I distrust altogether the *alibis* pleaded by the prisoners. Seeing nothing, therefore upon any of the grounds taken up by the Sessions Judge, to lessen the weight of the evidence for the prosecution, I concur in their conviction and in the sentence passed upon them by my colleague.

PRESENT:

D. I. MONEY AND H. V. BAYLEY, ESQS., *Officiating Judges.*

GOVERNMENT
versus
SONATUN DOME CHOWKEEDAR (No. 6.)

Hooghly.

1858. — June 30. — Case of SONATUN DOME CHOWKEEDAR.

The prisoner convicted of being present in a dacoity attended with murder was

CRIME CHARGED.—1st count, dacoity on the night of the 22d June, 1849, in the house of Ramlochun Goopto of Baorey thannah, in zillah Burdwan; 2nd count, dacoity with murder on the night of the 9th January, 1858, in the house of Thakoordoss Poddar of Rampore, thannah Roynah, zillah Burdwan; 3rd count for having knowingly and unlawfully received property (Nos. 1 to 3,) stolen in the dacoity charged in the 2nd count; 4th count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seker Roy, Deputy Magistrate for the suppression of dacoity at Hooghly.

Tried before Mr. J. E. S. Lillie, Additional Sessions Judge of Hooghly on the 2nd June, 1858.

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under the circumstances of the case sentenced to transportation for life, instead of capitally under Clause 1, Section 4, Regulation LIII. of 1803.

Remarks by the Additional Sessions Judge.—The prisoner pleaded *guilty*. It is proved* that he freely and voluntarily confessed in detail before the Committing Officer to having been engaged in six dacoities, including the two specified in the charge.

First count,—the prisoner's confession regarding this dacoity is corroborated by the evidence of the owner of the plundered house, who proves the occurrence, and who avers, that during the attack, he recognized Sonatun Moochee. The record† shows that Sonatun was arrested, and that he confessed before the Darogah and named the prisoner as an associate, the record was traced in consequence of the prisoner's confession.

Second and third counts,—it is proved‡ that this dacoity was committed, that the villagers followed the dacoits for some distance; that the dacoits discharged arrows at the villagers; and that Judoo Chowkeedar was struck in the stomach with an arrow; that the prisoner was knocked down and secured by the villagers, with some of the plundered property in his possession; which has been identified;§ that he freely and voluntarily made a full and unreserved confession before the Darogah,|| which he repeated before the Deputy Magistrate of Jehanabad;¶ and that Judoo Chowkeedar died from the effects of his wound. The Darogah neglected to send the body for a *post mortem* examination; but from his evidence and that of several other witnesses, the cause of death cannot be doubted.

I consider that all the counts are conclusively proved. The law* declares that all persons convicted of having been present aiding and abetting, at a murder committed in the prosecution of a dacoity shall be adjudged to suffer death, and consequently I am unable to recommend any other sentence.

In consideration of the courage and good conduct displayed by witnesses Nos. 3 to 5, in pursuing the dacoits, and in attacking and arresting the prisoner, I have authorized† the payment of a reward of 100 rupees to be equally divided between them.

It seems to me desirable to give some compensation to the family of Judoo Chowkeedar,

* Witness No. 10, Gopal Misser No. 11, Joynarain Chuckerbutty.

† *Nuthee* No. 199, Page 34.

‡ Witness No. 3, Bullaye Chowkeedar, No. 4, Kally Semandar, No. 5, Hullodhur Mullick.

§ Witness No. 2, Thakoordoss Poddar, No. 6, Muddoosoodun Panja.

|| No. 6 and No. 7, Goyaram Sein.

¶ Witness No. 8, Sreenath Mitter, No. 9, Premchand Poddar.

* Clause 1, Section 4, Regulation LIII. of 1803.

† Circular of Nizamut Adawlut dated 5th December 1832 No. 121.

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who evinced bravery and determination in a remarkable manner and who lost his life in the execution of his duty.

Remarks by the Nizamut Adawlut —(Present: Messrs. D. I. Money and H. V. Bayley.) In this case the specific dacoities charged are fully proved against the prisoner, as also the fact of the prisoner belonging to a gang of dacoits.

The Sessions Judge recommends that the prisoner be sentenced *capitally* under Clause 1, Section 4, Regulation LIII. of 1803. That law provides that any person present aiding and abetting in a dacoity, in the prosecution of which murder is committed, shall be liable to death.

The prisoner was present in a dacoity, where murder was committed, and he is a police chowkeedar, and a professional dacoit.

But we do not think this is a case in which the penalty of death should be inflicted. The prisoner individually had no concern whatever with the murder. The death of the deceased person was caused by an arrow, shot by one of the dacoits when they were retreating from the scene of action, and the prisoner is not shewn to have been with or near the dacoit who fired the arrow at the time. On the contrary, the prisoner was wounded, and captured separately. It was after the dacoity had been committed,as the dacoits were making off, that the deceased, a chowkeedar of a neighbouring village opposed them in their flight, and was shot by an arrow in a different direction, it would seem from, that taken by the prisoner, and died the next day from the effects of the wound. It is not proved, moreover that the prisoner was either the leader of the gang or took a more prominent part than others in the dacoity, so as to render it necessary to select him as an example and pass upon him the extreme sentence of the law. Under these circumstances, we sentence the prisoner to be transported for life.

MEMO.

Copy of the Sessions Judge's letter and of this judgment will be sent to Government, with a view to the recommendation in the Sessions Judge's last para. being considered by his Honor the Lieutenant Governor.

PRESENT:

A. SCONCE, ESQ., *Judge.*

GOVERNMENT AND SURROOP LUSHKER
versus
TRIAL NO. 22, SHUKMOY BAGDEE.
GOVERNMENT
versus
TRIAL NO. 9, DOOTEE DASSEE.
TRIAL NO. 10, BHOOTEE DASSEE.

24-Perghs.

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Case of SHUKMOY BAGDEE and others.

One prisoner convicted of adultery is sentenced to six months' imprisonment. Two others convicted of perjury.

CRIME CHARGED IN TRIAL NO. 22.—Adultery with Bhootee Dassee, the wife of co-prosecutor, Surroop Lushker.

CRIME CHARGED IN TRIAL NO. 9.—Perjury, in having on the 5th January, 1858, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the Magistrate of Howrah, that she saw the prisoner Surroop Lushker strike the prosecutor Shukmoy Bagdee on the neck with a hatchet (*kataree*), and in having on the 27th March, 1858, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the Additional Sessions Judge of the 24-Pergunnahs, &c. that the aforesaid prisoner did not strike the prosecutor in her presence; such statements being contradictory of each other, on a point material to the issue of the case.

CRIME CHARGED IN TRIAL NO. 10.—Perjury, in having on the 5th January, 1858, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the Deputy Magistrate of Howrah, that the prisoners Koochil Lushker and Bissonath Lushker were present at the time the prosecutor Shukmoy Bagdee was assaulted, and that the aforesaid Koochil struck the prosecutor on the head with a piece of wood (*peera*), and, in having on the 27th March, 1858, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the Additional Sessions Judge of the 24-Pergunnahs, &c., that the prisoners Koochil Lushker and Bissonath Lushker were not present at the time the prosecutor was assaulted, such statements being contradictory of each other, on a point material to the issue of the case.

CRIME ESTABLISHED IN TRIAL NO. 22.—Adultery. IN TRIALS Nos. 9 and 10.—Perjury.

Trials Nos. 22, 9 and 10.—Committing Officer.—Mr. J. J. Grey, Magistrate of Howrah.

TRIALS NOS. 22, 9 AND 10.—Tried before Mr. J. E. S. Lillie, Additional Sessions Judgeon the 29th March, and 8th May, 1858.

Remarks by the Additional Sessions Judge, IN TRIAL NO. 22.—The guilt of the prisoner is clear. It has been proved

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that he was found in a wounded condition at the door of the prosecutor's house, and that he admitted that he had carried on an intrigue with the wife of the prosecutor for some time.

The prisoner pleaded *guilty*. He is defended by a vakeel, and it is urged that the prisoner was invited by the wife of the prosecutor.

The Law Officer has delivered a *futwa* in accordance to the provisions of Clause 1, Section 6, Regulation XVII. of 1817, which convicts the prisoner.

I concur and sentence the prisoner to be imprisoned for (3) three years, and to pay a fine of Co.'s Rs. 50 on or before the 12th proximo, or labor during the term of his imprisonment.

Remarks by the Additional Sessions Judge.—IN TRIAL No. 9, Surroop Lushker was indicted for wounding Shukmoy Bagdee with intent to kill him; and Koochil Lushker and Bisshonath Lushker, two brothers of Surroop, were indicted for aiding and abetting in the above assault. A third count charged the prisoners with "assault on the prosecutor." It was proved that Surroop found his wife and Shukmoy together, and that he severely wounded the latter with a hatchet.

The contradictory statements of the prisoner in the present trial (who is the wife of Bissonath Lushker) are sufficiently described in the charge.

She pleaded guilty. Her depositions have been duly proved. She urges in her defence that, when examined in this Court, she became frightened and forgot what she had before stated.

In concurrence with the *futwa* of the Law Officer, I convict the prisoner of the crime of perjury, and sentence her to be imprisoned for three (3) years with labor suitable to her sex.

Remarks by the Additional Sessions Judge IN TRIAL No. 10. —Surroop Lushker was indicted for wounding Shukmoy Bagdee with intent to kill him, and Koochil Lushker and Bissonath Lushker two brothers of Surroop, were indicted for aiding and abetting in the above assault. A third count charged the prisoners with "assault on the prosecutor." It was proved that Surroop found his wife and Shukmoy together, and that he severely wounded the latter with a hatchet.

The contradictory statements given by the prisoner in the present trial (who is the wife of Surroop) are sufficiently described in the charge.

She pleaded *not guilty*. Her depositions have been duly proved. In her defence she avers that from fear and confusion she did not know what she was saying (when examined in this Court.)

In concurrence with the *futwa* of the Law Officer, I convict the prisoner of the crime of perjury, and sentence her to be imprisoned for three (3) years with labor suitable to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. A.

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Sconce.) I have now three trials before me that originated under the same circumstances. One Surroop Lushker, having, during the day, left his residence for another village, returned some time after night-fall. On his return he detected Shukmoy Bagdee, while having intercourse with his wife, Bhootee, in his (Surroop's) own house. Surroop assaulted and wounded Shukmoy. Hence followed two trials; the one against Surroop for assault; the other against Shukmoy for adultery; and from the conflicting nature of the depositions given by two women examined at the former trials, two other trials for perjury. Surroop was convicted and punished with three months' imprisonment. From that sentence there has been no appeal, but the parties convicted in the other three cases, have appealed.

Shukmoy has been convicted of the crime of adultery and has been sentenced to three years' imprisonment with a fine of 50 Rs. to excuse labour. Of the guilt of the prisoner there is no doubt. He admits it: only he urges in extenuation that for two years (as admitted by Bhootee, the adulteress, before the Magistrate) he had been in the habit of having illicit intercourse with her; and that the prosecutor took the law into his own hands and nearly killed him. I observe that on the trial of Surroop, the Sessions Judge found that he had struck Shukmoy with a hatchet, and had inflicted two severe incised wounds, the one across the temple and the other on the side of the neck.

Under these circumstances, it appears the purposes of justice will be answered by sentencing prisoner to six months' imprisonment, labor being excused on the payment of a fine of 25 Rs. within ten days from the date of the sentence being explained to the prisoner. The period of six months will run from the date of the Sessions Judge's conviction.

I now come to the perjury cases. First is that of Musst. Bhootee, wife of Surroop. Before the Magistrate she had said that she had seen two others, Koochil and Bissonath, about the time that her husband attacked Shukmoy; while before the Sessions Judge she said she had seen her husband only.

Again the woman Dootee (wife of Bissonath) in her deposition before the Magistrate said that she saw Surroop strike Shukmoy, while before the Sessions Judge she denied having seen Surroop strike Shukmoy; and said she heard from him that he had done so.

In both cases, the crime of perjury is technically proved. So far as I can judge, probably the statements made to the Sessions Judge are true: but at the same time, the circumstances, under which the depositions were taken, do not indicate any very deep degree of malice or of false purpose; and I think that in both cases the sentence imposed should be limited to six months' imprisonment with labor.

PRESENT:
D. I. MONEY AND H. V. BAYLEY, ESQS.,
Officiating Judges.

GOVERNMENT AND JOOGUL KISHORE SEIN
versus
MUSSUMMAT POONYE DASSEE.

Sylhet.

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Case of POONYE DASSEE.

The prisoner convicted of wilful murder, was, under the circumstances of the case, and for reasons given, sentenced to imprisonment for life in the Alipore jail.

CRIME CHARGED.—Wilful murder of the co-prosecutor's son Chunderkishore.

Committing Officer.—Mr. I. C. Dodgson, Officiating Magistrate of Sylhet.

Tried before Mr. M. Shawe, Sessions Judge of Sylhet, on the 17th May, 1858.

Remarks by the Sessions Judge.—The particulars of the case are as follows:—The prisoner and the co-prosecutor reside on the same premises, but in different houses. The prisoner, during the absence of the co-prosecutor and his wife, stole some *ghee* which was observed by the deceased, a child about six years of age, who told his parents; this caused a quarrel between the co-prosecutor's wife and the prisoner, in which the co-prosecutor afterwards joined: abusive language was used by both parties, and the prisoner became enraged to such an extent, that she declared positively she would not take food until she could within three days do something to the co prosecutor's son, the deceased.

Witnesses Nos. 8 and 9, being very young, were not examined on oath. They state that while they were playing together with the deceased, in the prisoner's house, at about a little before sunset, the prisoner called the deceased Chunderkishore and enticed him to go with her to have some cucumbers, the deceased followed her; and from that moment, he, the deceased, was never again seen alive.

Witness No. 7, Mussummat Jushodah, the mother of the deceased, deposes as above, and states that on the day of the quarrel, the prisoner declared she would not eat until she could do something to Chunderkishore, and that Chunderkishore disappeared a little before the evening, and that she believes the prisoner murdered her son.

Witnesses Nos. 11 and 12, Mussummat Bhobun and Mussummat Tarun, deposed that about evening, the prisoner took a basket to the nearest pond, which was covered with another basket, and which she concealed under some weeds and bamboos in the water, and returned home.

Witness No. 13, Lallchand, deposes that he on the 16th Chyte, before sunset, saw the prisoner place something under the

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weeds, &c. in Munglanund's (witness No. 14) tank, and that the corpse of the deceased was found at the very spot in the tank.

Witnesses Nos. 4 and 14, deposed that the corpse of the deceased was discovered in their presence in the tank on the morning after occurrence, the deceased's mouth being stuffed up, and his head covered with a cloth.

Witnesses Nos. 1, 2, 3 and 14, deposed that the prisoner declared, when the quarrel took place, that she would not take her food until after she could do something for the deceased, as he (the deceased) had told his parents that she (the prisoner) had stolen some *ghee* from their house.

The prisoner denied the charge throughout, but admitted having placed some paddy on the afternoon of the day of the occurrence in the tank in which the corpse of the deceased was found. The corpse of the deceased when discovered was said to have had some paddy on it.

Under all the circumstances of the case and from the evidence of the witnesses, the fact of the prisoner stealing *ghee* from the co-prosecutor's house, and her so doing having been mentioned by the deceased, and which caused a quarrel between the parties, the prisoner became enraged, and having enticed the deceased away, deliberately murdered him and afterwards concealed the corpse in the tank where it was discovered, is clear.

The Law Officer convicts the prisoner of wilful murder and states in his *futwa* that she is liable to *seeasut*. I concur in the verdict which convicts the prisoner on strong circumstantial evidence of the wilful murder of the deceased. That she actually committed the murder is not positively established. That the deceased was murdered is beyond a doubt, and the circumstances elicited on the trial would point to the prisoner as the person by whom the act was committed. I would recommend that she be sentenced to imprisonment in transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. D. I. Money and H. V. Bayley.)

Mr. D. I. Money.—On the 15th Chyte, 1264, or the 27th March last, Chunderkishore, the son of the prosecutor, a child, six years old, informed his mother that he had seen the prisoner steal some *ghee* from her house. When her husband came home she mentioned the theft to him; and they both charged the prisoner with it. She denied the charge; when a quarrel ensued; and the prisoner declared she would eat nothing unless she made the mother *sonless* within three days. On the evening of the following day, the 28th March, the boy was playing with his sister and two companions, when the prisoner enticed him away, telling him she would give him some cucumbers; from which time he was never again seen alive. A search was instituted when the child was missed, and the day after, the 29th March,

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the body was found in a tank with a cloth tied round the head and neck, and another cloth stuffed like a ball in his mouth.

These facts appear clearly on the evidence. We have here the quarrel of the prisoner with the boy's mother in consequence of his informing her of the theft; a threat of mortal injury to the boy; the prisoner's being the last person seen with him, and the discovery the day after of his dead body in a tank, under mysterious circumstances, raising a strong presumption of foul play.

It remains to be seen what circumstantial evidence there is to connect the prisoner with the death of the child.

In denying the charge, the prisoner admitted both at the thannah and before the Magistrate the *quarrel* with the mother, declaring that the accusation of the theft was false.

Mussummat Goura, No. 10, states that one Sunday evening in the month of Cheyt, she does not remember the date, she saw the prisoner come out of a Kookabar (a kind of bush) into a pepper-field; that she called out to her, and asked her what she was doing in the bushes; when the prisoner ran stealthily towards a cluster of plantain trees and concealed herself; that shortly after she came to her house and took two baskets; and she then saw her bending or lying over the basket opposite the plantain trees with her face to the ground; and she asked the prisoner's aunt, who resides in the same house with the prisoner, to come and see what she was about; and that on her replying that probably her niece (the prisoner) was wetting the chaff of the grain, she went home; and that afterwards when she heard of the murder of Chunderkishore, and the discovery of his body in the tank of Mungolanund, she was convinced in her own mind that the prisoner had murdered him.

This evidence before the Sessions court is nearly the same as that given before the Magistrate, and there is no reason to distrust it.

It gives an account of the prisoner's strange and mysterious conduct in a field near her house on the very evening when the deceased was last seen with her, and was first missed. But the principal point in the evidence is her coming from the field to her house for the basket; and her being seen to lie over it afterwards with her face to the ground.

Other witnesses depose to the prisoner on the same evening taking a basket, with another over it, to the tank; and stating when asked that she was taking grain to soak for the preparation of '*churra*.'

She is afterwards seen with the basket at the tank by the witnesses, Nos. 11, 12 and 13; and is observed to take something out of the basket, and put it in the water under some weeds near some bamboos; where subsequently the body of the deceased was discovered.

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It is true that two of these witnesses at the thannah deposed that the prisoner took out a *dead body* from the basket, and put it in the water describing her agitation and strange manner, and their own alarm; and that these statements are subsequently modified; and they afterwards depose, one of them, that she could not distinguish what was taken out of the basket; but it was something of a black and white colour; and the other that it was something wrapped up in cloth. This discrepancy is reconciled, I think, by the further statement they make, that they believed from the after-discoveries that took place, that the prisoner murdered the child, and that it was the child's body she took out of the basket.

Although there was no medical evidence as to the cause of death in consequence of the decomposition of the body, there cannot, I think, be a doubt under the circumstances, from the bindings of cloth found round the head and neck, and the stuffing of cloth in the mouth, that the child must have been suffocated, or met with a violent death in some manner by unfair means. The prisoner admitted at the thannah that she took the baskets to the tank to soak grain and sunk them in the water. She also admitted her communication with Mussummat Goura, when she was in the pepper-field, and with Bhoobun Dhobanee at the tank, so far verifying their statements to that effect. The evidence, moreover, shows, that the prisoner was in the constant habit of going to the tank of Mungolanund to wash, and fetch water. The links of circumstantial evidence appear to me to be very strong, connecting the prisoner with the death of the child, although there was no eye-witness to the deed, and as I do not see under all the particulars disclosed, how any one else but the prisoner could have compassed that death, I convict her of wilful murder. She is of course liable to the extreme penalty of the law, but as the Sessions Judge has not recommended capital punishment, and transportation may on some accounts not be advissable, and as strict attention is paid to the penal discipline of female prisoners in the Alipore jail, and banishment to that jail from the district is felt as an aggravation of punishment, I would, under the circumstances of the case, sentence her to imprisonment for life in the Alipore jail.

Mr. H. V. Bayley —In this case the quarrel about the theft of the *ghee* ; the threat to make the mother of the deceased boy *sonless ;* the enticement by the prisoner of the child from the companions with whom he was playing ; the fact that he was thereafter never seen alive, and the finding of the body next day, with grain on it, and the face tied up with a cloth and a cloth in the mouth, in the tank, at the spot where prisoner had been seen with two baskets, and which she admits had

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grain which she had been steeping at that tank, are fully proved.

I do not consider the evidence of the witnesses who say they saw the prisoner take a corpse or something like a corpse out of the basket is sufficient, or trustworthy. It is insufficient, for there is nothing to shew whose the corpse was; and untrustworthy, as it varies in regard to the fact of its being a corpse, or something like a corpse, or something dark. The proof as it is, is however enough to afford a strong presumption of the guilt of the prisoner of murder; but there is no clear proof that the prisoner's hand committed the deed; nor that what the witness, Goura, saw the prisoner leaning over, was the body alive or dead, of the deceased. I would not therefore pass the irrevocable sentence of death.

I would sentence to imprisonment for life in the Alipore, jail as transportation is not expedient for females, and as the discipline in that jail, is of a more penal character than in other jails.

SUMMARY CASES.

JUNE,

1858.

SUMMARY CASES.

JUNE 1858.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

No. 43 OF 1858.

RAMBRIMO GOSAIN,—PETITIONER.

VAKEEL OF PETITIONER, BABOO RAMGOPAUL GHOSE.

VAKEEL OF GOVERNMENT BABOO SUMBHOONATH PUNDIT.

Nuddea.

1858.

June 18.

Case of RAMBRIMO GOSAIN.

The order of the Deputy Magistrate imposing upon the petitioner a fine of 200 Rupees, or in default of payment imprisonment for three months, for refusing to give evidence on oath, was reversed in appeal. Held by the Court for reasons given at length, that the provisions of Section 25, Act II. of 1855, which was chiefly enacted for Her Majesty's Courts, being exactly the same in the wording those of Sec-

The petitioner appeals from the sentence of the Deputy Magistrate, imposing upon him a fine of 200 Rupees, or in default of payment imprisonment for three months, for refusing to give evidence on oath.

The petition is preferred on the following grounds.

I. It is contrary to the practise of the Court to take the depositions of defendant in criminal cases on oath.

II. The decision of the Deputy Magistrate in imposing a fine of Rupees 200, or in default to be imprisoned for three months for my refusing to depose on oath is illegal, inasmuch as the charge, in which I have not deposed on oath, has been dismissed by the Magistrate.

III. In my defence, I have stated that I am perfectly ignorant of the charge brought against me. Hence it is not just to enforce my depositions on oath.

The petitioner was a *defendant* in a case before the Deputy Magistrate.

The Deputy Magistrate merely states "the defendant has repeatedly refused to give his evidence as will appear from his statements of yesterday's and to-day's date, and his evidence is necessary."

The Sessions Judge in rejecting the petitioner's appeal to his Court remarks: "On 20th October, appellant was ordered to give evidence. Under Section 25, Act II. of 1855, the Court has power to compel any person present in Court to give evidence."

It is urged by Baboo Sumbhoonath Pundit in support of the Deputy Magistrate's order that Act II. of 1855, is applicable to Criminal as well as Civil Courts and that under Section 25 of

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tion 25, Act XIX. of 1853, which amended the law of evidence in the Company's Civil Courts, could not be considered applicable to criminal Courts, although they are not so clearly and expressly defined, as to prevent the possibility of misconstruction.

the Act cited, when read in connection with Section 32, the Magistrate is competent to compel any defendant before him in a *criminal* trial to give evidence, and to impose a fine upon him under the general laws of evidence, if he refuses.

Under Section 32 of Act II. of 1855, there is no doubt that a *witness* may be compelled in any civil or *criminal* proceeding, to answer any questions tending to *criminate* himself and under Section 25 of the same Act "any person present in Court, whether a *party* or not, may be called upon and compelled by the Court to give evidence."

The only question is whether by "*the Court*" is meant a Criminal as well as Civil Court, and whether "*a party*" means or not a defendant in a criminal trial. Section 19 of the Act provides that "any party to a civil suit or other proceeding of a civil nature may be compelled to give evidence as a witness under the rules prescribed in Act XIX. of 1853."

In interpreting the intent of the Sections 19 and 32 of the Act, there can be no mistake, inasmuch as there is no such a specific provision in the former for the examination *as a witness*, of any party to a *civil* suit or proceeding and in the latter for rendering it obligatory on a witness, in any *civil* or *criminal* proceeding, to answer even criminating questions.

But reading all the Sections consecutively from 19 to 32, and taking them in connection with each other, I do not think that Section 25, although the wording of the Section is not so clearly and expressly defined as to prevent the possibility of misconstruction, can be held to apply to *criminal* Courts.

It appears to me that the object of Section 25, was to give power to the *civil* Court, to examine any party to a suit *present in Court though not summoned;* the words of this Section are exactly the same as the words in Section 25 of Act XIX. of 1853, which Act amended the law of evidence in the Company's Civil Courts, and surely if it had been intended by the re-insertion of this Section in Act II. of 1855, which was chiefly enacted for Her Majesty's Courts, to introduce that desirable reform in our criminal Courts, viz. the examination of a defendant as a witness in certain cases, it would have been specified in more express and unmistakeable terms. Moreover, as the law Section 32, distinctly enacts that *witnesses in criminal* proceedings are bound to answer questions tending to criminate themselves, if a *defendant* in a *criminal* trial could, under Section 25, be examined as a witness on points on which he would be likely to criminate himself, the law would have laid it down distinctly, and not have left it uncertain.

Under these circumstances, I reverse the orders of the lower Courts, and direct the amount of fine to be returned, if it has been paid by the petitioner.

PRESENT:

D. I. MONEY, Esq., *Officiating Judge.*

No. 33 of 1858.

JOYKISHEN MOOKERJEE,—PETITIONER

VAKEEL OF PETITIONER.—MR. R. T. ALLAN.

VAKEEL OF GOVERNMENT.—BABOO SUMBHOONATH PUNDIT.

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The prayer of the petitioner requesting that certain expressions in the decision of the Sessions Judge should be expunged as extra judicial was for reasons given by the Court rejected.

The following is the recorded ground upon which the application is preferred.

"The order of the Sessions Judge is extra judicial, inasmuch as the point taken notice of by the appellate Court was not before him judicially. The remaining particulars are fully stated in the English petition, so there is no need of putting them down here again."

I have carefully perused the judgments* of the Magistrate and the Sessions Judge in this case.

Magistrate's judgments.

* This has been a continuous series of oppression by the defendant Juddonath against Muddun Day, now alleged to have been forcibly carried away and concealed, and it has "culminated" in the present case.

As regards the extent to which Baboo Joykishen Mookerjee the master of the defendant Juddonath is implicated, there is not, nor is there any hope of obtaining just now, any proof.

But as regards the plunder of Muddun Day's property by the defendants now punished, there is ample and clear proof.

The former papers, filed with this case, shew the defendant *Juddoo* with others in this case after repeated warnings was bound down to keep the peace. This order was upheld in appeal. The present case is attended with all the difficulties which almost invariably exist in these "*goom*" cases. Whether the man has really been concealed or no, cannot be legally clear, until he appears. I prefer therefore not to punish the defendants on that part of the charge, leaving them as well as the zemindar himself liable to punishment if the case is hereafter proved. I punish the defendants for *loot* and plunder of the missing man's property. They are clearly proved to have committed this *loot*, both by the police reports and the evidence (vide especially but not exclusively evidence of No. 1, prosecutrix No. 2, Ishwur Nundi, No. 3, Khetter Paul, No. 4, Gureedass Day.) It, in my opinion, rather aggravates than palliates the offence that this gross oppression was committed under the shadow of the so-called *law*. If these men . . . . . to be exempted from punishment, merely because they acted under an alleged "*punjun*" or "*bistum*," we should have nothing but the laws used as a cloak for all sorts of wide-spread oppression. The state of things is bad enough already, and to countenance such proceedings, as in the present case, would make them infinitely worse.

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The Magistrate had to try a charge of gross oppression and plunder, of assault, and forcibly carrying away the man, whose property, under, it would appear, the cloak of a false summary suit, was plundered, and of concealing him.

For, in the present case, even the impudent pretence of the "*punjun*" is a shallow pretext. Nothing is brought to show that any *notice* was issued, it is not likely that it was, or surely Muddun who had been perpetually complaining would have brought the matter into Court. The shop was notoriously that of which Muddun was a sharer. There is nothing brought to show why the oppressor Juddo (defendant and gomashta of the village) should have supposed that the property of Muddun was that of the alleged defaulters in this spurious "*punjun*." What power had the Chundeetollah (Serampore) peadah to assist in this distraint and seizure in Ballootee (thannah Doonjoor Howrah).

To epitomize—

1. It is clear from the previous papers (vide *Nuthee* A) that all sorts of oppression had been exercised against Muddun by the defendant Juddoo and others.

2. It is equally clear that on this occasion, the oppression culminated in the seizure of Muddun's property.

This is not denied even.

It is more likely that the spurious "*punjuns*" was used to cloak gross oppression, than that Muddun's property out of *Muddun's shop* was taken by mistake! for the property of two alleged defaulters who had nothing to do with that shop.

The *alibis* I treat as so much waste paper. The presence of all the defendants is clearly proved, especially by the evidence and reports noted above.

For the gross *loot* and oppression, I punish the defendants as noted in column 8.

If the missing man is found, I shall *re-open* the case against these defendants and the zemindar.

Meanwhile the Darogah is directed to institute separate enquiry against the zemindar for oppression of the prosecutrix during the trial of this case. This investigation is now going on.

The defendant, Lallmohun, who is apparently a mere tool in the hands of the other defendant, is *conditionally* discharged.

Sessions Judge's judgment.

This is an appeal against the order of the Magistrate.

The appeal briefly is technical and upon the merits.

Technically, that the appellants applied to have the witnesses for prosecutrix examined in their presence or cross-examined. This objection is sustained.

On the merits, upon the question of jurisdiction, whether the remedy for colorable distress is not in the revenue Courts. Third parties may reply under Reg. X. 1846. The penalty is provided under Section 6, Reg. XVII. 1793, (1) restoration of property or its value, (2) a fine equal to that value, and (3) the costs, thus there are ample remedies. It is difficult to say where the civil jurisdiction ends and the criminal one commences, so as to vest the Magistrate with authority. It is a difficult subject and much involved.

But there has been a very gross case of assault committed as per the Darogah's report of the 25th of February. I see no reason to doubt that report. It appears too that the husband of the prosecutrix was forcibly carried off to the house of Joykishen Mookerjee.

He finds the charge of plunder only substantiated, and for that offence punishes the defendants. The principal defendant is the gomashta of the village, and a servant of the petitioner Joykishen Mookerjee.

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Regarding the extent to which the petitioner is implicated, the Magistrate states that "there is not, nor is there any hope of obtaining just now, any proof."

Regarding the forcible abduction and concealment of Muddun Day, the Magistrate adds further on that he prefers "not to punish the defendants on that part of the charge, leaving them as well as the zemindar himself (the petitioner) liable to punishment, if the case is hereafter proved."

It would appear from the Magistrate's judgment that Muddun Day has been subjected to a long and continuous series of oppressive acts on the part of the defendant Juddonath, culminating, as he states, in the present case, the plunder of his property.

There could be no more grievous oppression than the offence which was charged, but remains to be proved, the forcible abduction and concealment.

The Magistrate, in conclusion, observes, "If the missing man is found, I shall *re-open* the case against these defendants and

It appears further that one Juggoo Paul had been similarly abducted when he went to give notice to the police *pharree*, and not having been released for six weeks, that abduction caused great fear and consternation.

From the records I am of opinion that the zemindar is personally responsible, parties are violently carried off and taken to the zemindar's house and then they disappear. The authority of the Magistrate has been feebly exercised in this case. I see no steps taken with a view to search that house of this zemindar.

Is the house of a Bengalee Baboo, however wealthy, within a few miles of the Government-house, to be beyond the possibility of examination, and search upon sufficient ground? What further warrant can the Magistrate require than the deposition of the wife of the abducted, or the report of the Darogah, who might also be examined upon oath, if an additional deposition was needed.

The Magistrate proposes to re-open the case. The zemindar I hold to be responsible for that man's production. He was seized violently by his men, removed to his house, and the Magistrate should hold the zemindar strictly to his responsibilities.

The case goes back upon the technical point, the witnesses must be produced in Court in order to give the opportunity of cross-examination.

It will be within the Magistrate's discretion to institute further enquiries or receive additional evidence on either side or not, but I am certainly of opinion that the zemindar should be brought to trial, acquitted or convicted, punished by the Magistrate or committed, just as may appear the proper course. The people look to the Courts for protection and they are entitled to it.

The appellants will remain upon the former bail, unless the Magistrate deem it expedient to reduce the amount.

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the zemindar." "Meanwhile the Darogah is directed to institute separate enquiry against the zemindar for oppression of the *prosecutrix* during the trial of this case. The investigation is still going on."

From the sentence of the Magistrate the defendants appeal to the Sessions Judge. The Sessions Judge on examining the proceedings of the case finds that "a very gross assault had been committed," that "the husband of the prosecutrix was forcibly carried off to the house of Joykishen Mookerjee (the petitioner)" that "one Juggoo Paul had been similarly abducted, when he went to give notice to the police *pharree*, and not having been released for six weeks, that abduction caused great fear and consternation," and he adds "from the records I am of opinion that the zemindar is *personally* responsible."

After animadverting in strong terms upon the conduct of the petitioner, he proceeds as follows: "The zemindar, I hold to be responsible for that man's production. He was seized violently by his men, removed to his house, and the Magistrate should hold the zemindar strictly to his responsibilities.

He lastly, in remanding the case for re-trial upon a technical plea which was urged in appeal, gives his opinion, that the petitioner should be brought to trial.

It was urged by Mr. Allan in behalf of the petitioner, that the remarks of the Sessions Judge on the point of the abduction of Muddun Day, which was not before him in appeal, were extra-judicial and uncalled for, and being prejudicial to the character of the petitioner, he prayed that this Court would direct them to be expunged.

There is no doubt that the Sessions Judge in remanding the case for re-trial was fully competent to direct the Magistrate to proceed as he might think proper, and to record such instructions as he might consider the merits of the case or the requirements of justice rendered it necessary for him to record.

The charge of forcible abduction and concealment was so closely connected with the charge of plunder, being, as it would seem, the *final* act of the many oppressive acts complained of before the Magistrate, and which formed the continuous series of oppression of which he was to take cognizance, that it was impossible I think, in remanding the case for the Sessions Judge to separate them.

The Sessions Judge has certainly used very strong language in animadverting on the conduct of the petitioner, and it is possible that some of the remarks were not altogether called for by the appeal as it stood, or the evidence on the record. The petitioner had not been put upon his defence, and the case, as against him, had not been tried. So far therefore the remarks may have been to some extent extra-judicial, but I fail to see that they are objectionable, as likely to bias the mind of the

Magistrate, or that it was possible for the Sessions Judge, under the circumstances, to refrain from giving expression to some opinion upon the subject of the petitioner's conduct, as connected with the case and the charges before him, and I think he was right in directing that the petitioner should be put upon his defence, inasmuch as such a course was the best course that could be pursued in exculpation of the petitioner's character, if he was innocent, and it was due to the petitioner, and the husband of the prosecutrix and the right administration of justice.

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Taking this view of all the proceedings in the case, I see no reason to direct that the expressions complained of in the Sessions Judge's decision, should be expunged and therefore reject the prayer of the petitioner.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

NO. 19 OF 1858.

MOZAHUR ALLEE DAROGAH—PETITIONER

VAKEELS OF PETITIONER, MR. R. T. ALLAN AND BABOO ONOKOOLCHUNDER MOOKERJEA.

VAKEEL OF GOVERNMENT.—BABOO SUMBHOONATH PUNDIT.

Purneah. 1858. June 19. Case of MOZAHUR ALLEE DAROGAH.

The Sessions Judge's order in a criminal trial directing the Magistrate to dismiss the petitioner a police darogah, from his situation, was reversed in appeal, upon the ground

The following are the recorded grounds upon which this appeal is preferred.

CHARGE.—Dismissal from service.

I. Although the Sessions Judge has stated in his *fysallah*, that this case has been got up by the prosecutor through my collusion, yet neither the defendant nor the witnesses have alleged so in the lower Court.

II. The Sessions Judge should have, either himself or through the Magistrate, taken my defence and then passed the order.

III. That the witnesses cited for local investigation have given their depositions, the fault for non-insertion of their names in the *soorothal* can no longer be imputed to me.

IV. The Sessions Judge has stated why the Darogah of Mancool Menhar has not signed the papers connected with the investigation held by me. But it is to be considered by this Court that the aforesaid Darogah had no authority, to hold

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any enquiry, as the place of occurrence was not within the jurisdiction of his thannah.

V. I commenced to search after the plundered property on the 2nd June, 1857, and the investigation completed on the 14th July, hence how is it possible that the plundered property had been found in the pond on the 27th June, after the completion of the enquiry.

VI. When the Magistrate, on approval of my investigation, had committed the case to the Sessions, my responsibility is no more.

VII. It is not necessary to say anything about the statement made by the Sessions Judge as to no proof of perpetration of the act having been discovered and of the dacoity being a got-up one.

VIII. The prosecutor has stated that no stolen property has been found from the defendant's house.

IX. The Sessions Judge has stated that the Darogah has not written in his report that he took the defendant Nothoor's confessions in the evening, but the Court will consider that when the date and year is written in the said answer, there cannot be any fault on my part.

that he should have been put upon his defence, before such order was passed, and allowed an opportunity of making any statement he might wish, and of substantiating such statement, in his exculpation. Held that the Sessions Judge was *competent* under the provisions of Section 15, Regulation XXV. of 1814, and Clause 8, Section 7, Regulation XVII of 1816, to direct the removal from his office of any police officer, if his conduct appeared, from any proceeding before him on trial at the Sessions, to be such as to require his removal.

JUDGMENT.

One, Bhutoo, was committed to the Sessions charged with the crime of dacoity. The petitioner was the Darogah who investigated the case. The Sessions Judge was of opinion that the charge was a false one, got up in collusion with the Darogah and the villagers and acquitted the prisoner. He refers especially in his judgment, to the Darogah's misconduct in the preparation of the *soorothal*, the discovery of the property stolen, and the taking down of the prisoner's confession, and concludes with the following remark "the Darogah having misconducted himself in sending up such an utterly false case, is quite unworthy the further confidence of Government, and I therefore send a proceeding to the Magistrate directing him to dismiss Mozahur Ally the Darogah from his situation."

The first objection urged by the petitioner's pleader in his behalf, viz. that the Sessions Judge was not competent to pass such an order, falls to the ground. Under the provisions of Section 15 Regulation XXV. of 1814, and Clause 8, Section 7, Regulation XVII. of 1816, the Sessions Judge is empowered to direct the removal of any police officer, if his conduct appear, from any proceeding before him on trial at the Sessions, to be such as to require his removal from the public situation held by him.

As this is an appeal direct from the order of the Sessions Judge passed in a criminal trial, this Court can take up the case upon its merits. The order was not final, and there is no other Court to which the dismissed officer could apply for redress.

I have carefully examined all the proceedings, and although I think there are *some* grounds for suspicion of collusion, and in the conduct of the case there is undoubtedly on the part of the Darogah an apparent want of diligence and caution, still I think, under the circumstances, he should have been put upon his defence, and afforded an opportunity of stating anything he could, and of substantiating such statements, in his exculpation. There may be cases in which the evidence against a police officer is so overwhelming as to justify instant dismissal, but I think even in such cases it is due, it may be, sometimes to the character previously borne, but always to the proper administration of justice, that he should be called upon to answer for his conduct before the sentence is passed.

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Case of MOZAHUR ALLEE DAROGAH.

The Sessions Judge's order is therefore reversed, and he will, after taking the petitioner's defence, reconsider the case and pass a fresh sentence with reference to these remarks.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

NO. 36 OF 1858.

RAJAH PERTABCHUNDER SINGH,—PETITIONER.

VAKEELS OF PETITIONER,—MR. R. T. ALLAN, AND BABOO KISHEN KISHORE GHOSE.

VAKEEL OF GOVERNMENT BABOO SUMBHOONATH PUNDIT.

Beerbhoom.

1858.

June 19.

Case of RAJAH PERTABCHUNDER SINGH.

The orders of the lower Courts were reversed in appeal, upon the ground that the Magistrate's order, inflicting a fine of 200 Rupees on the peti-

The recorded grounds of special appeal in this case are as follows:

I. It is very improper on the part of the Magistrate to impose a fine on me for non-payment of wages due to dawk peon Nobinchunder.

II. The dawk station is at "Sanah" the zemindaree of another party, hence under Clause 4, Section 10, Regulation XX. of 1817, I cannot be held responsible for the arrangement of the said dawk station.

III. In conformity with the requirements of said Clause, the criminal authorities are not justified to appoint dawk Moonshee and peon and to pay their wages by taking the amount from the zemindars.

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Case of RAJAH PERTABCHUNDER SINGH.

IV. Although the Magistrate under Clause 5, Section 10, Regulation XX. of 1817, is authorized to impose fine to the extent of Rupees 100, yet when the dawk station is not within my zemindaree the order passed by the Magistrate cannot be otherwise than illegal.

It was urged by Mr. Allan that the order of the Magistrate imposing a fine upon the petitioner, on the ground of his neglecting to pay wages due to a dawk peon was irregular, that the only village in the vicinity belonging to the petitioner was situated at a considerable distance from the dawk, and within the station of another zemindar, and that he could not therefore be held accountable for the dawk arrangements, and that even if the order, passed upon the petitioner on the ground of neglect and responsibility, was not opposed to the provisions of the law, still the amount of fine being in excess of the amount authorized by Section 10, Clause 5, Regulation XX. of 1817, the Magistrate was not competent to pass it.

...tioner for neglecting to make proper arrangements for the dawk, was opposed to the provisions of Clause 5, Section 10, Regulation XX. of 1817 which authorise only a fine of 100 Rupees as the *maximum* amount to be imposed in such cases, and he was directed to proceed according to law, and in re-trying the case to consider and determine any plea the petitioner may urge in his defence.

It appears from a perusal of the proceedings of the lower Courts that the petitioner was first fined by the Magistrate 200 Rupees for contempt of Court in refusing to carry out an order to pay the dawk-runners. This order was reversed.

The petitioner has now been fined 200 Rupees for neglecting to make proper arrangements for the dawk.

This order of the Magistrate has been confirmed by the Sessions Judge in appeal, the Judge merely stating that "the Magistrate has an undoubted right to call on the zemindars to make arrangements for the post; and it is clear that the appellant had not carried out the orders."

The Court are of opinion that the order of the Magistrate inflicting a fine of 200 Rupees upon the petitioner is opposed to the provisions of Clause 5, Section 10, Regulation XX. of 1817, which authorize only a fine of 100 Rupees as the maximum amount to be imposed in such cases. The orders of the lower Courts are therefore reversed, and the amount of fine levied and paid will be returned, and the case will be remanded to the Magistrate, who will be directed to proceed according to law, and, in re-trying the case, will consider and determine any pleas the petitioner may urge in his defence.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

No. 51 OF 1858.

KHEROO SIRCAR AND OTHERS—PETITIONERS.

VAKEEL OF PETITIONERS—MR. J. W. B. MONEY.

VAKEEL OF GOVERNMENT—BABOO SUMBHOONATH PUNDIT.

Rajshahye.

1858.

June 19.

Case of KHEROO SIRCAR and others.

Application for a review of the judgment of this Court passed in the case of Government v. Kheroo Sircar and others, was rejected on the ground that the arguments urged by the petitioner's Counsel and the authorities cited by him in their support did not apply to the circumstances attending the affray, as found by the Court upon the evidence, a long feud having existed between the rival parties, who had made extensive pre-

This is an application for a review of judgment perferred by Mr. Money in behalf of the prisoners whom he defended in the case of Government *versus* Kheroo Sircar and others, tried by this Court on the 12th May, 1858.

The grounds upon which the review is asked are as follows: That the assembly of the prisoners in the cutcherry of which they had possession, was a legal assembly for the defence of it; that the resistance made to the attack upon the cutcherry was lawful and justifiable as a defence against trespassers; that it was not excessive, and a party attacked in his own house may legally pursue his adversary until he has secured himself from all danger; that none of the prisoners was alleged to have struck any blow to which the deaths or wounds could be attributed, and consequently they could only be held guilty of such deaths or wounds as aiders and abettors responsible for the acts of others, and that their being such depended on the purpose, which they aided and abetted, whether it was lawful or unlawful, and whether the deaths and wounds were inflicted by others in pursuance of a previous unlawful concert with the prisoners; that, as there was no evidence of this, the prisoners could only be held answerable for their own acts, and not for those of others, and that lastly, the prisoners being justified in defending the dwelling house against assault and attack by others, before dawn, while it was yet dark, the case was one of justifiable homicide. In support of these arguments, Mr. Money cited consecutively Russell on Crime, volume 1, page 273, do. page 662, Roscoe on Evidence, page 765, Russell, volume 1, page 30, do. page 662 and especially volume 5, Select Nizamut Reports, page 15.

The arguments urged by Mr. Money, supported as they are by such good authorities, would have had their legitimate weight with the Court, had not the facts attending the affray, as found by the Court upon the evidence, been such as to preclude their application.

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parations, and were armed and ready for the expected collision, and instead of seeking the protection of the law, took the the law into their own hands and hazarded the issue.

The Court found that there had been a hot feud of long-standing between the rival parties, that extensive preparations had been made, that that party, who was so ably defended by the learned Counsel, and for whom he now again pleads, had been armed as well as their adversaries, and were ready for the expected collision, and that instead of placing themselves under the protection of the law they took the law into their own hands and hazarded the issue. Both parties at the time were bound under heavy recognizances to keep the peace. Such a state of circumstances is not analagous to those to which the learned Counsel's arguments and the authorities cited would justly apply, and which might have formed a ground of justification to the prisoners. The only distinction which the Court thought proper to make was *in favor* of the prisoners for whom Mr. Money pleads in consequence of their having been proved to be in *possession* of the building which was attacked, and consequently considered as the assailed and not the aggressors, a distinction more favorable perhaps than was strictly in accordance with the intent of the explanatory affray law Regulation VI. of 1828.

With reference therefore to the arguments now urged, and which to a great extent are a repetition of the arguments used, when the case was tried upon its merits, and during three days received the fullest consideration, the Court see no reason to alter the sentence it passed upon the prisoners, and reject the application.

QUARTERLY

No.

FOR JULY, AUGUST, AND SEPTEMBER.

1858.

NOTICE.

WITH reference to Government Order, dated the 27th May, 1857, No. 2783, *Quarterly* Numbers only of Selected cases are published.

REGULAR CASES.

JULY,

1858.

REGULAR CASES.

JULY, 1858.

PRESENT:

J. H. PATTON, ESQ., *Judge*, AND G. LOCH, ESQ., *Officiating Judge*.

GOVERNMENT

versus

SREEMOTTIA GOYA (No. 5,) SREEMOTTIA RAJEE (No. 6,) AND SHOOBUL DOSS (No. 7.)

Midnapore.

1858.

July 6.

Case of SREEMOTTIA GOYA and others.

The principals convicted of administering drugs to procure abortion and thereby causing the death of Mussamut Onee, sentenced to fourteen years' imprisonment, as the circumstances of the case called for a severe punishment.

CRIME CHARGED.—Wilful murder of Mussamut Onee Bewa by administration of drugs to procure her abortion.

Committing Officer.—Mr. J. M. Lowis, Magistrate of Midnapore.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 22nd May, 1858.

Remarks by the Sessions Judge.—The prisoners plead "*not guilty*," and have really no defence to make.

The prisoners Goya, No. 5, and Rajee, No. 6, urge their confessions were extorted.

The prisoner Shoobul Doss No. 7, states that his daughter-in-law, the deceased, went to her aunt's where she got ill; that she attempted to return home, but was unable to proceed further on the road than the village of Tolbageecha, from which he fetched her in a *dhoolee*.

The circumstances of the case are briefly as follows:—

Anundo Doss Bustom, witness No. 17, the son of the prisoner Shoobul Doss, had, about ten months before this trial, married the deceased Onee,* the widow of Sathgoap by the form of *kuntee buddul* or interchange of necklaces, the usual custom, it appears, among the class called Bustom.

* Anundo Doss, witness, No. 17, pages 36-39.

In course of time Onee became pregnant, Shoobul Doss under the impression, apparently, that disgrace attached to them in consequence of this, determined on destroying the fœtus of his daughter-in-law. He proceeded accordingly to the house of Juggernath Doss and Mussamut Radhee, witnesses Nos. 15 and 16, to whom the deceased Onee was related, and from whose house she had been married, and consulted with them what was to be done; at the same time, upbraiding them with having inveighled him into the connection by the assurance that they

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had taken means to cause her barrenness.* Juggurnath and Radhee tried to dissuade him from his purpose, and assured him, no disgrace could attach to the pregnancy of his daughter-in-law; in confirmation of which, Radhee pointed to the infant in her own arms.

* Juggurnath Doss witness No. 15, pages 31-33.
Sreemotee Radhee, witness No. 16, pages 34, 35.

Notwithstanding this, Shoobul Doss, while his son was absent from home, took his daughter-in-law to the house of the prisoner Rajee No. 6, and offered her a reward, if she would destroy the fœtus. The prisoner No. 5,† Goya was present on this occasion. On the following day, Rajee prepared some medicine for the purpose, and she and Goya took Onee to a jungle where it was administered and caused the expulsion of the fœtus in about two hours' time. They then helped her homewards as far as a village called Tolbageecha. At this place, Onee became so unwell as to be unable to proceed, and they left her at the house of Sreemuttia, Alladee and Soorjee saying, her father-in-law would come for her the next morning‡. Shoobul Doss did go as promised, and brought Onee home to his house at Baropath in a *dhoolee* which was carried by the witnesses§ Puchoo and Seetul Doolia. On that day or the 4th Choit, Suroop Pritihar witness No. 22, passed the prisoner's house a little before noon and found that Shoobul Doss, prisoner No. 7, had cut down a portion of a tree. On enquiring, he was told by the prisoner that it was intended for Onee's cremation; but as no intimation of her illness had been given to any one, he insisted on seeing the body. His suspicions became confirmed on doing so, and he gave information to the police. An enquiry was made and the corpse sent into the sudder station, but in too decomposed a state to permit of a *post mortem* examination.

† Confessions of the three prisoners, pages 4, 6 and 55-58.

‡ Alladee, witness No. 18, pages 40, 41.
Soorjee, witness No. 19, pages 42, 43.

§ Puchoo, witness No. 20, page 44.
Seetul, witness No. 21, page 45.

The above facts are substantiated by the evidence of the witnesses and the confessions of the prisoners. It is also in evidence that Rajee produced from her house and delivered to the police mohurrer a bag of medicine, and also the remnant, as she said, of the stuff which had been administered to the deceased. The confessions of the prisoners are proved to have been voluntary by the attesting witnesses, and there is no reason to doubt that those confessions are true. The two first prisoners called witnesses in defence, but they state nothing in their exculpation, Shoobul Doss cited no witnesses.

The conduct of this prisoner seems unaccountable; from what

I can gather from the evidence no disgrace whatever could attach to the pregnancy of his daughter-in-law, and the husband thought the same. From his evidence, however, it would appear that Suroop Pritihar Chowkeedar, witness No. 22, had been active in punishing these parties for having married the widow of a Sathgoap by prohibiting the services of the Barber, Dhobee, &c., and this may have induced Shoobul Doss to procure the fœticide which resulted in his daughter-in-law's death. The Jury return a verdict of guilty in their several degrees against all the prisoners, and I convict Shoobul Doss, prisoner No. 7, of procuring abortion, Rajee No. 6, of administering medicine which caused the abortion and resulted in the death of Onee. Goya I convict of being an accomplice in the said crime.

Considering the position in which the prisoner Shoobul Doss stands to the deceased, the absence of all warrantable ground for his suspicion that any disgrace attached to the fact of his daughter's pregnancy, his offence appears to me most reckless and wanton. There is no security that he will not pursue the same course with any other woman his son may marry, I would make a severe example of this man and imprison him for life. The prisoner Rajee appears to be in the habit of administering medicine to women in a state of pregnancy, and, by her own confession, to have once before been guilty of a similar crime, and I would sentence her at least to fourteen years' imprisonment. The prisoner Goya appears to have taken a subordinate part in the transaction, though undoubtedly an accomplice of Rajee, and I am of opinion that seven years' imprisonment in her instance will be a sufficient warning to others.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and G. Loch.) The prisoners have confessed before the Police and Magistrate; and we have no reason to suppose that these confessions were other than voluntarily made. From these confessions, which are consistent and credible, it is evident that the prisoner Shoobul Doss, No. 7, applied to the prisoner No. 6, to administer drugs to his daughter-in.law, the deceased Onee, in order to procure abortion, she then being about four months gone with child. The prisoner Rajee, No. 6, consented, and in company with the prisoner Goya, No. 5, did administer some preparation which caused the rapid expulsion of the fœtus and the death of Onee in consequence. The prisoner Goya, No. 5, appears to have taken no active part in the proceedings. She was present when Soobul asked, and Rajee consented to administer a drug. She accompanied Rajee to the jungle and saw her administer the drug to Onee, who eat it without hesitation, and she, with Rajee, assisted the deceased to Tolbageecha where they left her in the house of Anund. The

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prisoner Shoobul Doss has filed a petition of appeal, but it is merely a repetition of his statements made before the police when first examined, and of his defence when on trial before the Sessions Judge; and we find nothing therein to impugn the correctness of the finding arrived at by the Sessions Judge. We therefore reject it; and considering that the circumstances of the cases as regards Shoobul, No. 7, and Rajee, No. 6, the latter of whom appears from her confession to be in the habit of administering drugs, call for the infliction of a severe punishment, we sentence the prisoner Shoobul Doss, No. 7, to imprisonment with labor and irons, in banishment, for fourteen years, and Mussamut Rajee to imprisonment with labor suited to her sex, in banishment, for fourteen years, and Mussamut Goya to three years' imprisonment, with labor suited to her sex, in the zillah jail.

PRESENT:

H. V. BAYLEY, ESQ., *Officiating Judge.*

GOVERNMENT

versus

DUKHINEY KAMAR.

Hooghly.

1858.

July 15.

Case of DOOKHINEY KAMAR.

Prisoner convicted of dacoity, under Act XXIV. of 1843, and sentenced to be transported for life.

Remarks on the comments of the Sessions Judge in regard to the testimony of accomplices and the necessity of clear evidence as to identity, in cases under the Act above cited.

CRIME CHARGED.—1st count, dacoity on the night of 16th August, 1850, on the boat of Mohineemohun Roy near Teeluckpore on the river Khurreah, thannah Kotwally, zillah Nuddea; 2nd count, dacoity on the night of the 4th October, 1850, in the house of Madhubchunder Gangolly of Shadunparah, thannah Nuddea, zillah Nuddea; 3rd count, dacoity on the night of the 25th July, 1853, in the Khurreah river below mouzah Hurindangah, in the boat of Ramsuhye Chamar of thannah Hotra, zillah Nuddea; 4th count, having belonged to a gang of dacoits.

Committing Officer.—Mr. T. E. Ravenshaw, Commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. J. E. S. Lillie, Additional Sessions Judge of Hooghly, on the 16th June, 1858.

Para. 2.—*Remarks by the Additional Sessions Judge.*—First count. Two approver* witnesses implicate the prisoner in this dacoity; and their evidence has been received by the Nizamut Adawlut in the following cases in which other dacoities were charged.

* Wit. No. 1, Nobaye Ghose,
„ „ 2, Gopaul Sheikh.

Madhub Ghose and others, Nizamut Reports Vol. VI. Part 1, page 685.

Kistochunder Ghose, do. do. page 674.

Madhub Bagdee do. do. Part 2, page 359.

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Jadoo Ghose, Nizamut Reports, Vol. VI. Part 2, page 715. Hurrish Ghose, do. do., page 364.

Para. 3.—Second count. Another approver* witness implicates the prisoner in this dacoity, approver witness No. 1 also implicates him; but he did not name him in his original confession. The evidence of these approvers has been received in the trial of Lokenath Joogee, who was sentenced by the Nizamut Adawlut on the 14th January last.

* Witness No. 3, Manick Ghose.

Para. 4.—Third count. Approver-witnesses Nos. 2 and 3, implicate the prisoner in this dacoity; and their evidence has been received in the trial of Poorai Sheikh, who was sentenced by the Nizamut Adawlut on the 25th May last.

Para. 5.—Fourth count. In addition to the above approver-witnesses two others† depose that they have been engaged in other dacoities with the prisoner. He has also been denounced by Shurriat Sheikh, an approver, who has escaped.

† Wit. No 4, Koobeer Ghose.
„ „ 5, Soleem Sheikh.

Para. 6.—Before the Committing Officer, the prisoner stated in his defence, that he had a quarrel with approver-witness No. 4, concerning the price of a cart and bullocks. In this court, the prisoner denies that the mark of a wound which is visible on his head was caused by a blow from a confederate for concealing some plundered property, as averred by witness No. 3. The prisoner also asserts that the other approver-witnesses have been induced to accuse him by No. 4; but as that witness confessed after the others, and does not speak to the same dacoities as they do, the prisoner's assertion is manifestly false. Witnesses Nos. 6 to 9, depose that the prisoner is a bad character.

Para. 7.—I fully concur in the following observations of the committing officer: "The statements of the approver-witnesses have been most thoroughly tested and frequent convictions have been obtained on their evidence, there is no corroboration of the approver's testimony, except as to the fact of the occurrence of the dacoities charged; but in the absence of any evidence for the prisoner's defence, the repeated corroboration of the approver's testimony to the whole facts of the cases and to the identity of other prisoners previously convicted, entitles it to full weight in the present instance."

Para. 8.—Phillips observes in his Treatise‡ on the law of evidence that: "It is not necessary, that he (the accomplice) should be confirmed in every circumstance which he details in evidence; for there would be no occasion to use him at all as a witness, if his narrative could be completely proved by other evidence free from all suspicion. Nor need it appear from the confirmatory evidence, that he speaks truth with respect to all the

‡ 2nd edition, page 32.

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prisoners, or with respect to the share which each had in the transaction. But if the jury are satisfied, that he speaks truth in those parts, in which they see unimpeachable evidence brought to confirm him, that is a ground for them to believe, that he also speaks truly with regard to the other prisoners, as to whom there may be no confirmation."

Para. 9.—By the more recent practice of the English courts, it is undoubtedly required that the confirmation should "consist in some circumstance that affects the identity of the party accused;" but such confirmation is deemed necessary because the temptation to commit perjury is so great where the witness by accusing another may escape himself. It is manifest, however, that the same reasoning does not apply to approvers in this country.

Para. 10.—I consider that the charge of having belonged to a gang of dacoits is satisfactorily proved; and I would recommend that the prisoner be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. V. Bayley.) I consider the 1st, 3rd and 4th counts proved against the prisoner. The 1st count is proved by the concurrent and consistent testimony of witnesses Nos. 1 and 2. They named the prisoner in this dacoity long before his arrest in 1857, i. e. on the 18th January, 1854 and 17th January, 1855, respectively, and their testimony then is consistent with their testimony now, and that of the one agrees with that of the other, as to the general facts and the identity of parties concerned, including this prisoner.

The 3d count is proved in the same manner by the testimony of witnesses Nos. 2 and 3.

The 4th count is proved by the testimony of witnesses Nos. 1, 2, 3, 4 and 5. I observe that the evidence in the Commissioner's office of No. 5, has not been sent to this Court.

I convict the prisoner under Act XXIV. of 1843, and sentence him under the same Act to be transported for life.

In regard to the remarks of the Sessions Judge in paragraphs 7 and 8 of his letter of reference, the Court refer him to the last paragraph, (especially the last six lines of the paragraph,) of page 63, Nizamut Adawlut Reports, January 1857, case of Jodoo Mundul Chasa. The paragraph is cited in the margin* for ready reference.

In respect to paragraph 9, the Court observe that the rule of English law as to identity, there cited, is one to be most carefully observed. It must be remembered that although pardoned, approvers have not, in cases like the present in this country, the temptation to commit

* With reference to the remarks of the Officiating Additional Judge in the concluding paragraphs of his letter of reference, the Court observe that the question involved in them is not one of a point of law, admitting of a general ruling by the Court; but one of the amount of credibility and consideration to be accorded to a certain description of evidence, i. e. that of accomplices. The solution

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of that question must depend on the view which the presiding Judges may take of the various circumstances of each particular case, as corroborative, and to what extent, and to a sufficient extent or not, of that evidence; in other words, as the presiding judges have to consider the weight to be allowed to the various circumstances in each particular case, in connection with the credibility or consideration to be allowed to such evidence, no general ruling could be made, fixing absolutely the weight to be given to such evidence per se, in all cases alike.

perjury to escape punishment by accusing others, they have other strong temptations peculiar to this country to commit that crime; revenge, means, of extortion, &c.

It must also be remembered that perjury in this country is far more common and prevalent than in England. The practical evils of it, in cases of the Deputy Commissioner's office are to be found in the Nizamut Adawlut Reports, cited below from page 259, of Vol. VII. 1857.

"In fact the Court desire that the Commissioner and his subordinates will consider it a rule imposed by this Court that whenever the approvers, whose names are referred to, in the cases noted in the margin,* as untrustworthy, or others who have been declared to be so in other cases by the Nizamut Adawlut are entered in the calendar as witnesses, the fact may be distinctly stated therein."

* Khetter Kowra and others Nizamut Adawlut Reports.

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PRESENT:

J. H. PATTON, Esq., *Judge*, AND G. LOCH, Esq., *Officiating Judge*.

GOVERNMENT

versus

RAMDHON KOWRA (No. 4,) MOHES KOWRA (No. 5,) BADUL KOWRA (No. 6,) GOPINATH KYBURT (No. 7,) NUBOO MAJHEE BAGDI (No. 8,) AND SEEBOO BAGDI (No. 9.)

Hooghly.

1858.

July 26.

Case of RAMDHON KOWRA and others.

The evidence of approvers when not corroborated by other independent testimony, held to be insufficient for the conviction of the prisoners, who were released.

CRIME CHARGED.—1st count, dacoity on the night of the 21st August, 1857, in the house of Bungsheedhur Ghose of Nundunbatee thannah Bydiobatee, zillah Hooghly; 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. T. E. Ravenshaw, Commissioner for the suppression of dacoity at Hooghly.

Tried before Mr. J. E. S. Lillie, Additional Sessions Judge of Hooghly, on the 8th June, 1858.

Remarks by the Additional Sessions Judge.—Prisoner No. 6, pleaded guilty. It is proved* that he freely and voluntarily confessed in detail, before the late dacoity commissioner, and before the Deputy Magistrate un(der the dacoity commissioner) stationed at Hooghly, to having been engaged in five dacoities, including the one specified in the charge. The remaining prisoners pleaded *not guilty*.

* Wit. No. 4, Gopaul Misser,
" " 5, Joynarain Chuckerbutty.

First count. Two approver-witnesses† implicate all the prisoners in this dacoity. Approver-witness No. 1, was apprehended,‡ with some of the plundered property in his possession, on the night of the dacoity by Bungshee Chowkeedar and others; he confessed before the darogah§ and before the Deputy Magistrate|| of Serampore; and in both those confessions, and in his subsequent confession before the dacoity Deputy Magistrate, he named all the prisoners as his associates.

† Wit. No. 1, Deenoo Kowra,
" " 2, Ramchand Bagdi.

‡ *Nuthee* No. 88, Page 2.

§ Page 9.

|| Pages 19 and 20.

All the prisoners are denounced in other dacoities by the above approver-witnesses and by another.¶

¶ Wit. No. 3, Betia Gopaul Kowra.

Defence of the prisoners.—Before the committing officer, prisoner No. 4, stated that he had

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a caste-dispute with approver-witness No. 1; and that he refused to give a place to approver-witness No. 2, when he carried off a woman of the Kyburt caste. In this Court he mentions the same causes of enmity, and adds that he threatened approver-witness No. 1, with loss of caste for sheltering approver-witness No. 3, who had carried off a woman. He further affirms that he was on his beat at the time of the dacoity with which he is charged; witnesses Nos. 6 to 10, depose favorably of the prisoner's character.

Before the committing officer, prisoner No. 5, stated that the approver-witnesses entertained enmity against him, because his fellow-villagers would not allow witness No. 3, to live with witness No. 1; in this Court he avers that witness No. 3, carried off his, prisoner's wife; and that witness No. 2, was incensed against him, because he refused to pay money to have intercourse with the daughter of a Banya with whom that witness was cohabiting; witnesses Nos. 11 to 13, depose unfavorably of the prisoner's character.

Before the committing officer, prisoner No. 7, stated that he had dispute with witness No. 1, about cattle-trespass; and that he had a dispute with witness No. 2, who was a chuprassee in an indigo-factory, and who reproved him because an indigo-field was not properly weeded. In this Court he avers that the cattle of witness No. 1, destroyed his, prisoner's crops, and that they quarrelled in consequence; that he took advances for indigo plant from the factory of which witness No. 2, was a chuprassee but that he, prisoner, did not cultivate his land; that he remonstrated with that witness for an act of immorality; and that his house is in *Bherabheree*, and not in *Bazeemole*, as was stated by witness No. 3; with reference to the last allegation, it would appear that the two villages are close together. Witnesses Nos. 14 to 17, do not speak favorably of the prisoner's character.

Prisoner No. 8 stated before the committing officer that he refused to give *dustooree* to witness No. 1, when he was employed in a factory; and that having once neglected to work, he was abused and assaulted by witness No. 2. In this Court the prisoner adds that witness No. 2, came to his house with the daughter of a Banya, and that he reproved that witness for speaking to her. Witnesses Nos. 18 to 21, depose unfavorably of the prisoner's character.

The defence of prisoner No. 9 is much to the same effect: according to his statements, he reproved the witnesses for acts of immorality. Witnesses Nos. 22 to 24 depose unfavorably of the prisoner's character.

The evidence on the first count having been so satisfactorily confirmed, the affirmations of the approver-witnesses, that all the prisoners belonged to a gang of dacoits, may be credited; and I would recommend that they be transported for life.

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Case of RAMDHON KOWRA and others.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and G. Loch.) With the exception of the prisoner No. 6, all the other prisoners plead *not guilty*, and assign reasons, which it must be admitted, are of no great weight, for their being charged with the crime by the approvers. In the first count, the prisoners are charged with the commission of a dacoity in Mouzah Nundunbatee on the night of 21st August, 1857. The approver-witnesses Nos. 1 and 2, confessed to the Deputy Commissioners for the suppression of dacoity on 1st September, 1857, and 17th February, 1858, to having committed this dacoity and they mentioned the names of the prisoners as among their accomplices. They further stated that the prisoners had been engaged with them in the commission of a dacoity at Dharpoor, and witness No. 2, mentioned other dacoities which they had mutually perpetrated. The record of the Nundunbatee dacoity is submitted to corroborate the evidence of the approver-witnesses. It shows that on the night of the robbery (August 21st, 1857) one of the dacoits the approver Dunoo Kowur No. 1 was seized by the villagers; that on the 22nd, he made a confession to the darogah in which he implicated the witness No. 2, and all the prisoners. No further corroboration than the confession of this approver taken before the darogah eight or ten days before his confession was made to the Deputy Commissioner is given. In order to test the accuracy of the evidence given by the witnesses Nos. 1 and 2, reference was made to their confessions regarding the Dharpoor dacoity in which they deposed that they and the prisoners had been engaged. In the confession of witness No. 1, the name of one only of the prisoners, Nuboo Majhee prisoner No. 8, appears and in the confession of witness No. 2, mention is made of three prisoners Nos. 5, 6 and 8.

The evidence of the witness No. 3, is adduced to prove the general count. He identifies the prisoners Nos. 5 and 6, as being concerned with him in the Ramchunderpore dacoity and Nos. 4 and 9, in the Dogachya dacoity. His confession before the Deputy Commissioner shows that he mentioned the names of Nos. 5 and 6, as having been engaged in the former, but, the names of neither of the two other prisoners are found in his account of the latter dacoity, unless Dhuna Hari of Gopalpoor and Ramdhun Kowra prisoner No. 4, of this trial be one and the same, a point which neither the committing officer nor the Sessions Judge have taken the trouble to determine.

As the evidence of the approver-witnesses has not been corroborated by other independent evidence, the Court do not think that evidence sufficient of itself for the conviction of the prisoners. They, therefore, direct, that the prisoners, with the exception of Badul Kowra prisoner, No. 6, be released, and they convict the prisoner, Badul Kowra on his own confession and sentence him to be transported for life.

PRESENT:

G. LOCH, Esq., *Officiating Judge.*

GOVERNMENT AND LUCHOO MOHTO

versus

THAKOOREE DOME (No. 1,) SHAYKOOA GOALLA (No. 2,) THEKOOREE SINGH (No. 3, APPELLANT) TOOFANEE DOME (No. 4,) ZALIM SINGH (No. 5 APPELLANT) AHLAD SINGH (No. 6,) CHOONIA DOME (No. 7,) AND OODHOOA DOME (No. 8.)

Bhaugulpore.

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Case of THEKOOREE SINGH and others.

Appeal rejected, as the appellants had been identified by the prisoners and one witness at the time of the dacoity, and were unable to prove their claim to certain articles of alleged plundered property, nor to substantiate their plea of enmity.

As some check to collusion on the part of the police, it is advisable that officers of police investigating cases of dacoity should, before proceeding to apprehend parties on the information of

CRIME CHARGED,—1st count, dacoity in the house of the plaintiff, and plunder of property valued at Rupees 12-6; Nos. 1, 3, 4 and 6, 2d count, knowingly possessing a part of the above mentioned stolen property.

CRIME ESTABLISHED.—Dacoity in the house of the plaintiff, and plunder of property valued at Rupees 12-6.

Committing Officer.—Mr. W. Ainslie, Magistrate of Bhaugulpore.

Tried before Mr. T. Sandys, Sessions Judge of Bhaugulpore, on the 12th May, 1858.

Remarks by the Sessions Judge.—A dacoity took place in prosecutor's house, on 12th March last, which led to the prisoners' apprehension, as recognized by the prosecutor and witnesses* at the time of the occurrence, and on searching their houses some of the plundered property was duly recovered at prisoners Nos. 1, 2, 3, 4 and 6, the prisoners set up no particular defence beyond assigning frivolous and somewhat contradictory motives to the prosecution. The witnesses cited by them speak to nothing in their favor.

* Luchoo Mohto, prosecutor
Wit. No. 1, Gopaul Mohto,
" 2, Leeloo Mohto,
" 3, Bhooput Mohto,
" 4, Punch Couree,
" 5, Punchoo Mundul.

The recognition of Pheykoon, prisoner No. 2, is defective. He was not, like the other prisoners, consistently named from the first. The property claimed, as found in his house, also only consists of some *bhang.* I find the evidence against him weak and defective, and, giving him the benefit of such doubt, acquit him.

All the other prisoners are convicted and sentenced as follows: Sentence by the lower court, each to seven years' imprisonment with labor and irons in banishment to another zillah.

Remarks by the Nizamut Adawlut.—(Present: Mr. G. Loch.) The appellants and other prisoners in this case were recognized by the prosecutor and the witnesses. The evidence of the prosecutor and that of his brother-in-law, Gopaul, witness No. 1,

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were taken before the apprehension of the prisoners, and in their first statements they mentioned the names of the accused parties. The evidence of the other witnesses was taken subsequent to the apprehension of the prisoners. I therefore put little trust in their evidence as to recognition, the more especially as their statements appear to be a mere tutored repetition of each other's evidence. Property sworn to by the prosecutor and identified by the witnesses was found in the premises of the prisoner, Thekory Singh. He claims it as his own, but has failed to bring any proof of his assertion. He, as well as Zalim Singh, the other appellant in this case, plead in their defence, on the trial and in their petition of appeal, ill-will on the part of the prosecutor's master arising from cattle trespass, but have adduced no evidence to support the statement; and the witnesses called by them speak only to their being of good character. I do not find any sufficient ground for interfering with the conviction of these prisoners, as I consider the evidence of the prosecutor and witness No. 1, to be credible; and the prisoners have failed to prove either their right to the property or the plea of enmity. I therefore reject the appeal.

the prosecutor, ascertain from him the names of the witnesses to the fact and should examine them as to their recognition of the robbers, and after recording their answers concisely, should dispatch them with the prosecutor's information to the Magistrate without delay.

It is observable in most of the dacoity cases, which come from Bhagulpore, that the witnesses to the fact are seldom, I may say never, examined by the police officer, making the investigation, till after the prisoners, whether named by the prosecutor or arrested on suspicion, have been apprehended and examined, and then they invariably identify the whole of them. Such evidence is of course open to the greatest suspicion, for, whether it be so or not, it always bears the appearance of having been prepared by the police, and a conviction can seldom safely be made on such evidence, unless it be corroborated by other credible evidence. Were the police officer, making the enquiry, after ascertaining from the prosecutors the names of the dacoits he identified and the names of the witnesses to the fact, to send for the latter and ask each of them separately before proceeding to apprehend the parties accused by the prosecutor whether he had recognized any of the robbers, and were to despatch their statements at once to the Magistrate along with the prosecutor's information, there would be some little, though it is admitted an imperfect, check on the proceedings of the police, and there would be less room for collusion than there is at present. The evidence need not be taken in detail. After taking down the information of the prosecutor and before proceeding to take steps for the apprehension of the parties charged by him, a darogah could always find a few minutes to question the eye-witnesses as to the fact of recognition; for, having ascertained the names of the witnesses from the prosecutor, he might without losing time send for them if not in attendance while taking down the deposition of the prosecutor, and the only

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questions he would then be required to put, would be, "Were you present and whom did you recognize?" and the answers might be as briefly recorded, Yes! I saw A. B. C. or D. Any further information required from them might be subsequently recorded. By adopting some such method as now proposed there would be some check to the wholesale system of recognition, which renders the evidence unworthy of credit, as in the present case, and in the case of Laloo Munder *versus* Dowlut Mangee and others charged with dacoity, attended with murder &c. recently disposed of by this Court. In this latter case, the prosecutor mentioned the names of three of the prisoners under trial, Nos. 15, 16 and 17, to the darogah on giving his information on 20th April last. On 23d idem, the prosecutor gave a further deposition that people of the Bhooean caste and Karoo Purkeah and Mohes Purkeah had committed the dacoity. The darogah then hunted the country in all directions, searched houses and ultimately on 24th and 26th, apprehended four others, not named by the prosecutor. On the 26th *subsequent* to the apprehension of the prisoners, the darogah took down the statements of the witnesses to the fact, and, with one accord, they declared that they identified the whole of the prisoners at the time of the dacoity, though till the time their statements were recorded, (and some of them had been in company with the darogah three or four days,) they had not mentioned the name of one of the parties who were subsequently apprehended. Before the Magistrate and the Sessions Judge the prosecutor and witnesses swore that they had recognized all the prisoners while committing the dacoity. The Sessions Judge considering the evidence unworthy of credit, as regarded the four prisoners last apprehended, released them; and this Court, observing that the whole evidence was shewn to be untrustworthy and that there was no other evidence of any kind, except the oral testimony of the prosecutor and witnesses, which had been declared unworthy of credit, as to four of the prisoners, upon which to convict the remaining three prisoners, directed their release. The evidence in this case was evidently prepared by the police to ensure the conviction of the parties apprehended and failed in its object because it was overdone.

A copy of these remarks to be sent to the Superintendent of Police of the Bhaugulpore division for his consideration.

PRESENT:

J. H. PATTON, ESQ., *Judge* AND G. LOCH, ESQ., *Officiating Judge.*

GOVERNMENT AND LATOO MEAH BURHOOYAH

versus

NUKEE MEAH ALIAS GUREEBSHAW FUQUEER.

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Case of NUKKEE MEAH *alias* GUREEBSHA FUQUEER.

A witness of immature age who, in the opinion of the Court, ought not to be admitted to give evidence on oath or solemn affirmation, should be admitted to give evidence on simple affirmation; and such affirmation should be recorded on the written deposition of such witness. The evidence of a witness rejected by the Court, because there was no proof on the record that he had been examined either by the Magistrate or Judge on simple affirmation.

CRIME CHARGED.—Wilful murder of Nurrum Beebee.

Committing Officer.—Lieutenant R. Stewart, Officiating Superintendant of Cachar.

Tried before Mr. E. S. Pearson, Officiating Sessions Judge of Sylhet on the 16th June, 1858.

Remarks by the Officiating Sessions Judge.—The facts of the case in evidence are as follows: deceased, an aged woman, was seated one morning early, when all the men were out ploughing, in the *verandah* of her house. Prisoner came up to her and asked for a rupee, she said she could not give it him as her son had the money. He then asked for rice and she said there was none prepared. Upon this, he threw a *chudder*, which was lying close by round her neck, twisted it into the consistency of a cord, and dragged her inside the house; then, keeping his foot on the ends of the cloth, he broke open her chest, abstracted a *lotah*, said to contain rupees, &c., opened the door and made off across country to a neighbouring village, where he was captured having been chased and followed up by prosecutor and others, who saw him leave the house and leap over the palings.

Deceased was found inside the house strangled with the cord round her neck and the chest broken open.

The evidence is both direct and circumstantial.

The direct evidence is that of witnesses Nos. 1, 2 and 3,* eye-witnesses to the murder, of these, the evidence of witness No. 1 was taken without oath, he being a child of tender age, six or seven years old apparently, and not comprehending the nature of an oath. He, notwithstanding this, gave his evidence clearly and consistently and shewed such signs of intelligence as satisfied me that he was capable of receiving just impressions of the facts regarding which he was examined. Before me and the police, he stated, that he saw prisoner throw the cloth round deceased's neck, drag her into the house, and shut the door. Intermediately, before the Magistrate, he added, that he went round to the window, looked in, and saw prisoner consummating the deed and rifling the chest. This discrepancy was ascribed by the Magistrate to the fact of his having heard

* No. 1, Jadoo Meah,
,, 2, Mussamut Saroo Doomnee,
,, 3, Mussamut Ander Doomnee.

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the latter part of his story talked of after the occurrence and thus having at length come to believe that he really witnessed the whole, and indeed, when questioned by me as to the discrepancy, he said, that the latter part of his story, before the Magistrate was, what he had heard, not seen, and that his relation before me was the real truth.

There is a discrepancy somewhat similar in the evidence of witness No. 2 before me, and that before the Magistrate and the police. Before me she said that on looking through the window of the house, she saw prisoner rifling the chest; before the Magistrate and police she added that she likewise saw him with his foot on the ends of the cloth round deceased's neck who was lying under him. Her own explanation of the discrepancy is such as I have generally met with amongst female witnesses, viz. that she was frightened when first giving her evidence before me, but that she really did see all that she related before the Magistrate. This may or may not be true, but from a discrepancy between a point in her evidence, and that of prosecutor, I am somewhat doubtful as to her credibility, viz. this, she states that having witnessed the consummation of the murder, she went and called Latoo Meah, prosecutor; that he came out at her third call, and then she told him what she had seen; but prosecutor on the contrary states, that he ran out hearing Jadoo, the boy No. 1, crying out, "Nukkee has murdered grand-mother," and that from the time that he left his own house to the time that he went into deceased's house and found her dead, he *saw no one* but the prisoner running away, and in this statement he is supported by the evidence of witness No. 4, who was with him. He also states, that he first came to know of witness No. 2, having been an eye-witness of the deed *after his return from capturing prisoner when they were all sitting round*, and talking about it. As, however, her evidence is supported as to the fact of prisoner having gone into the house by that of Nos. 1 and 3, and as to the fact of his having been seen leaving it, by that of prosecutor, and Nos. 3 and 4, it *may* doubtless be true.

The evidence of witness No. 3, agrees with her depositions before the Magistrate and statement in the mofussil. It is, however, open to a degree of suspicion from the circumstance of its not having been known to any one except her Merasdar, Golam Dhur, that she had witnessed the murder till the 2nd day after the occurrence, when the said Golam Dhur mentioned to the darogah, that she had told him. She was walking past the *verandah* when prisoner threw the cloth round deceased's neck. She saw him go into the house, and waited, going along the edge of the tank, as she says, till he came out again, when she turned and saw him making off. If this be true, it is somewhat

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On the whole I am not fully convinced of the truth of the evidence of either of these female witnesses, of the truth of the boy, No. 1, I have no doubt. But the circumstantial evidence (prosecutor and witness Nos. 4 and 7,) is, in my opinion, of far greater importance, and upon it, a violent presumption amounting to proof arises that prisoner committed the murder.

Prosecutor and witness No. 1, ran out, hearing the boy cry, they saw the prisoner actually leaving the premises of deceased's house and running away. They went into the house immediately and found deceased lying dead, strangled, no one else was by, they chased and followed up the prisoner to a neighbouring village and there caught him; witness No. 7, also saw the prisoner walking quickly away from the deceased's house. There is some confusion and doubt as to whether he had or had not the *lota* and *huslee,* said to have been taken from deceased's house on him, when prosecutor and the rest came up with him. If he had, and their statement be true, that Delye Meah the man into whose house he ran, snatched the bag, containing them, away, and beat off prosecutor and his friends, this person ought to have been committed as an accessary after the fact, but the Magistrate appears to have doubted that part of the story, and it is not, I think, material to the issue of the case.

The prisoner pleaded *not guilty*, and, in his defence, urged ill-will on the part of prosecutor on account of a false charge of theft brought against him some years before by prosecutor, and a similar false charge brought against him by witness No. 4, three months previous, but he called no witnesses, and in his mofussil Foujdaree answers he admitted having been in jail some years ago for cattle-stealing, in fact almost all the witnesses in this case styled him " Nukkee *budmash*."

The inquest was held in a most careful and satisfactory manner by Dr. Shircore, the Assistant Magistrate, who made a professional examination of the body on the spot, from which it was proved that deceased had died from strangulation.

The law officer gave a *futwa* of "*zin ghalib*" rendering prisoner liable to *kisas* at discretion of the Court.

In this finding I concur, and, considering the charge of wilful murder established against the prisoner upon violent presumption, recommend capital punishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and G. Loch.) The circumstances of the case as gathered from the evidence are these. The deceased Nurrum Beebee, a woman of about eighty years of age, was seated in the *verandah* of her house, on the 15th Bysack 1265, B. S., the male portion of the family, with the exception of a boy, about seven or eight years old, having gone out to plough, when the prisoner,

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Sheikh Nukkee *alias* Gureebshaw Fuqueer, entered and asked alms. This was refused by the deceased on the ground that her son was absent and she could not give the money asked for. The prisoner then asked for rice. This was also refused for the same reason, the prisoner on this twisted a *chudder* which was lying in the *verandah* round the deceased's neck, dragged her off the stool on which she was sitting into the house, shut the door and having strangled the deceased, he broke open a chest, which contained the family property, and taking from thence a *lotah*, containing money and the *hasly*, belonging to the deceased, made his escape. The alarm had, however, been given by the boy Jadoo witness No. 1, and as the prisoner was leaving the house, the prosecutor and others entered the premises, and saw him break through the surrounding *tattee* and take an eastward course. After a momentary delay to ascertain what had occurred, prosecutor and others went in pursuit, and observed him making for Mouza Gunny, where they followed him and captured him as he entered the premises of Delaimeah.

The witnesses to the fact are Jadoo, the child who saw the prisoner twist the cloth round his grandmother's neck and drag her into the house, when he rushed off to call his uncles. Mussumut Saroo Doomnee, who came for wages due; but observing the front door shut, went to the south-end of the house, where there is a back door through a cooking shed and looking in for the deceased, saw the prisoner rifling the chest and the deceased lying apparently dead with a cloth twisted round her neck, and the prisoner's foot on the two ends of the cloth. Mussumut Adur Doomnee was passing by in front of the house, when she saw the prisoner, after twisting the cloth round the deceased's neck, drag her inside the house and shut the door. The witness frightened at what she saw, went away home, and Jadoo ran past her, crying out for assistance. Alarmed by his cries, the prosecutor, a son of the deceased, but living in an adjoining *bari*, and Mohamed Ally, witness No. 4, who was with the prosecutor ran to the deceased's house and saw the prisoner make his escape and found the deceased lying dead on the floor of the house with the cloth twisted round her throat.

The Sessions Judge convicts the prisoner on violent presumption and recommends a capital sentence. He considers the evidence of the boy, Jadoo, worthy of full credit, notwithstanding the additions he made to his previous statements to the police when examined by the Magistrate; but the knowledge of which, on the trial before the Sessions Judge, he admitted to be derived from hearsay. The Sessions Judge rather discredits the evidence of the other two eye-witnesses for the following reasons; Saroo Doomnee, witness No. 2, says that when she left the deceased's house she saw the prosecutor and told him what had occurred; but the prosecutor in his evidence says he was

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alarmed by the cries of Jadoo and ran to the house. And Adur Doomnee, witness No. 3, did not give her evidence till produced by her Merasdar the second or third day after the murder.

The Court have carefully perused the record and are obliged, through an apparent irregularity of the Magistrate and Sessions Judge, to reject the evidence of the boy, Jadoo, *in toto*. He is of tender years and incapable of understanding the nature of an oath and has, in consequence, been examined without oath. Act II. 1855, Section 15, prescribes that a witness of immature age, such as this child, shall be admitted to give evidence on a simple affirmation, declaring that he will speak the truth, the whole truth and nothing but the truth; but the record does not shew that this affirmation was taken from the witness before his examination by the Magistrate and Sessions Judge, and consequently his evidence is worthless and lost to the case. If the affirmation were taken, it should be distinctly noted in the record, so as to leave no doubt that the evidence had been properly taken. It would have been necessary to have returned the record to the local authorities in order that the evidence of Jadoo might be taken as required by law, had not the Court considered the evidence of the other eye-witnesses corroborated by the circumstantial evidence, sufficient for the conviction of the prisoner. The Court see no reason to question the credibility of these witnesses and as the medical testimony shews that the deceased's death was caused by strangulation and as the prisoner was seen by witness No. 3, to drag the deceased into the house after having twisted the cloth round her throat, and by witness No. 2, with his foot on the two ends of the cloth, which was twisted round her neck, while he rifled the chest, and the deceased was found lying dead on the spot, where the prisoner was last seen with her, and the prisoner admits having left Phoolbaree, the residence of the deceased, that morning and is unable to shew any sufficient cause for a false charge being brought against him, there remains no doubt in our minds as to the guilt of the prisoner, whom we convict of the wilful murder of Mussumut Nurrum Beebee, and as there are no mitigating circumstances in the case, we sentence him to suffer death.

PRESENT:

J. H. PATTON, ESQ., *Judge*, AND G. LOCH, ESQ., *Officiating Judge.*

LALOO MUNDUR

versus

DOULUT MANJEE (No. 15,) MEELOO RAWAOT (No. 16,) AND PUNCHOO ROY (No. 17.)

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Where the evidence against some of the prisoners was declared altogether unworthy of credit and they were acquitted in consequence such evidence unsupported by any other independent and credible evidence, held to be insufficient to convict other prisoners implicated in the same charge.

CRIME CHARGED.—Dacoity attended with murder of Sonoo Hulwaha and theft of property valued at Rupees 49-13.

Committing Officer.—Mr. F. B. Drummond, Joint Magistrate of Bhaugulpore.

Tried before Mr. T. Sandys, Sessions Judge of Bhaugulpore, on the 18th June, 1858.

Remarks by the Sessions Judge.—Dacoits attacked prosecutor's dwelling, on the night of the 18th April last, and plundered it of what it contained consisting of grain and household articles. The dacoits slightly beat the prosecutor. He escaped and brought up the villagers. The deceased, prosecutor's laborer running up in a different direction, was struck down and killed on the spot, by some one of the party of dacoits stationed outside the prosecutor's dwelling and amongst whom were the prisoners. The *post mortem* shewed the deceased to have received mortal blows on the head.

Wit. No. 1, Gangoo Chowkeedar,
" " 2, Radhay Kherhuree.
" " 3, Meerun Mushin,
" " 4, Bhuggoo Munder,
" " 5, Jhooproo Chamar,
" " 6, Jhubbun Koemhar,
" " 7, Bhyro Singh,
" " 8, Bhinkoo Munder.

Wit. No. 9, DwarkanathChatterjea, Sub-Assistant Surgeon.

Prosecutor and the eight above witnesses then stood aloof watching the dacoits until they departed, during which they depose both before the police, the Magistrate, and this Court that they recognized all seven prisoners amongst the dacoits.

Trifling articles of plundered property such as brass vessels, cloths and grain are said to have been recovered and identified during the search of each of the prisoner's houses.

Wit. No. 1, Gangoo Chowkeedar,
" " 2, Radhay Kherhuree,
" " 3, Meerun Mushin,
" " 4, Bhuggoo Munder,
" " 5, Jhooproo Chamar,
" " 8, Bhinkoo Munder,
" " 10, Panchcowree Singh,
" " 11, Khemam Rawaot,
" " 12, Mohee Rawaot.

The prisoners, except pleading *not guilty*, have not set up any particular defence, except claiming the recovered property as their own, to which effect they cite numerous witnesses who, however, know nothing in their favor beyond that of previous good character.

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The weight of proof, in such a case, necessarily rests on the recognition of the dacoits at the time of the occurrence, for, the recovery of the plundered property is of too trivial a kind to place sole reliance on, more especially in a case like the present one, in which there is much reason to suspect the police of grave laxity. There is enough of hard swearing thrice repeated by the eight eye-witnesses as to their recognition of all seven prisoners, but tested by the record itself, it grievously fails.

Wit. No. 31, Gopeenath Darogah.

From the manner in which the investigation was commenced and carried through by the police darogah, there is too much reason to discredit it, as having been forced against Goolal Sunker, Poorun and Jhooproo prisoners Nos. 18 to 21, from no other motives apparently than the reckless one of completing a case for the glory of the police, and to which, native complainants are ever ready to lend themselves. Doubtless under the circumstances, the witnesses enjoyed a lengthened opportunity for recognition which, otherwise corroborated, would have been entitled to much weight, but I find that not one of the prisoners Nos 18 to 21, was originally mentioned or pursued. They were not named in the prosecutor's original deposition of 20th April, No. 10, nor his supplementary one of 23rd following No. 17, and when questioned about it by this Court, he remained silent and would give no explanation. Yet the darogah says, they were apprehended on prosecutor's pointing out and no one else, although witnesses Nos. 1, 3, 4 and 6, of the eye-witnesses accompanied him throughout the whole of his enquiries. When further questioned, he acknowledged that prisoners Nos. 18 to 21 were not originally named by any one, consequently they were not at once apprehended. To all this must be added the singular fact, that the darogah never took the depositions of a single one of these eight eye-witnesses. Four of whom were thus his companions during his enquiries, until after all the prisoners had been apprehended viz. on 26th April, vide No. 43, as also acknowledged both by himself and these eight witnesses. Of course the recognition became easy enough after the apprehensions though as to what led to such apprehensions we are left in the dark. The darogah's own reports are the best confirmation of these untrustworthy proceedings. I refer to those dated and numbered as within.

22nd April,	No.	12,
23rd ditto	„	15,
24th ditto	„	16,
26th ditto	„	19.

It was in the last of these, he, for the first time, mentioned generally the witnesses as being in attendance. It is self-apparent from these reports themselves that the darogah was at his wit's ends in apprehending prisoners Nos. 18 to 21, after having first seized many others (released). Prisoners Nos. 18 to 21's, names appear for the first time in the two last reports. It is thus impossible to believe either prosecutor, or witnesses as

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to their recognition of these prisoners, for whether either in the naming or the pointing out of them by so many who thus, in the darogah's company, ought to have been able to recognize them at once, had there been any thing truthful in such recognition, not a single one originally took place, at the same time that there is no getting over the difficulty of the contradictions between the darogah and the prosecutor himself, the latter according to the former being the originator of the whole; whereas neither by the record or his own tongue was prosecutor anything of the kind. Prosecutor told this Court he did not name prisoners Nos. 18 to 21, until four days afterwards, because he had forgotten, and was not in his senses, but witnesses Nos. 1, 3 and 6, were in company, and if true, would doubtless have refreshed his memory. It is impossible to convict prisoners Nos. 18 to 21, on such worthless proceedings and giving them the benefit of the doubts they necessarily give rise to, I acquit them.

The case, however, is altogether opposite in respect of Dowlut Meeloo, and Punchoo prisoners Nos. 15 to 17. The very same documents are adverse to their innocence. They were from the first named by prosecutor, vide No. 10, the two first were at once apprehended vide 1st report, No. 12, which also mentioned being in pursuit of Punchoo apprehended the next day vide report No. 15. I therefore do not find the same reasons for rejecting the testimony of the prosecution as against them, and under the weakness of the defences I convict Dowlut, Meeloo and Punchoo of the dacoity and plunder attended with the murder of Sonoo Hulwaha and would sentence them to transportation beyond sea for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and G. Loch.) The prosecutor states that a gang of about twenty-five dacoits attacked his house on the night of the 18th of April last, and plundered it of grain and household articles, wounding him slightly with blows from a club, and killing Sona Hulwaha, his laborer, who chanced to come across them on their exit from the premises. Seven persons were apprehended on suspicion of being concerned in the dacoity, the three prisoners and four others, named severally Goolal Rai, Sunkin Rai, Poorun Rai, and Jhooproo Manjee. All were arrested on their alleged recognition by the prosecutors and neighbours on the night of the dacoity, and the finding in their houses, of articles of household furniture in common use among people of their class, said to be part of the stolen property, and all committed to take their trial in the Sessions Court upon that evidence. The Sessions Judge has given a somewhat elaborate judgment to show why that evidence in his opinion does not criminate the four persons above named and we think he is quite right in the view he has taken of the guilt of the prisoners as deducible

1858. July 31. Case of DOULUT MANJEE and others.

from that testimony and in ordering their release: but as seven persons are alleged to have been identified at the time of the dacoity by the same witnesses, and property of precisely the same character was found in the houses of all, its identity with the stolen articles not being satisfactorily established, it is difficult to imagine how the Sessions Judge considers the proof good against three and bad against four of the parties accused. He has certainly assigned causes for entertaining this difference of opinion, but these causes appear to us insufficient for a conviction, for as the Sessions Judge has released the four named prisoners because he considered the evidence for the prosecution quite unworthy of credit, therefore the other prisoners cannot we think be convicted on the same evidence uncorroborated by any independent and credible testimony. Evidence to recognition in cases of dacoity must always be received with the greatest caution, but where that evidence has broken down as regards some of the persons charged with the crime and has been found, as in the present case, to be utterly untrustworthy, it cannot be made use of to convict other prisoners implicated in the same charge. It is clear to us that this case, in which a conviction might possibly have been obtained, had the prosecutor adhered to his first story, has been spoiled by his collusion with the police, and among other internal evidence of this fact apparent on the record is this, that none of the persons released by the Sessions Judge were named by the witnesses until after their apprehension. Seeing therefore no corroboration of the only evidence recorded against the prisoners, viz. their recognition at the time of the occurrence and deeming that proof in itself insufficient for their conviction, we acquit the prisoners and direct their immediate release.

PRESENT:

J. H. PATTON, Esq., *Judge*, AND G. LOCH, Esq., *Officiating Judge.*

GOVERNMENT AND OTHERS

versus

MONJAN (No. 1,) GOPEE (No. 2,) SHUCHARAN (No. 3,) AND SOBNATH (No. 4.)

Shahabad.

1858.

July 31.

Case of MONJAN and others.

Prisoners released as the evidence of the prosecutors and witnesses was considered unworthy of credit.

CRIME CHARGED.—Wilful murder of Gundhoo, the prosecutor, theft and plundering cattle and severely wounding the prosecutors and being an accomplice in the above crime.

Committing Officer.—Moulvy Waheedoodin Principal Sudder Ameen with the powers of Magistrate, Shahabad.

Tried before Mr. William Bell, Sessions Judge of Shahabad, on the 1st July, 1858.

Remarks by the Sessions Judge.—The occurrence, took place on the 26th of June,* 1857, and information was given at the Ekwarry thannah the following morning, and all the wounded men were sent into the Sudder station and made over to the assistant surgeon's charge, under which Gunnoo died on the 14th of July and all the rest recovered. None of those suspected were arrested until January 16th and 17th. When Gopee No. 2, Monjan No. 1, Shucharan No. 3, and on the 13th of February, when Sobnath No. 4, was taken, the case was made over on the 7th of April last, but in consequence of the disturbed state of the district, it was impossible to get the witnesses until the 24th of June, when and on the 28th, the prisoners were brought to trial. It appears from the statement of the prosecutors and of the witnesses Nos. 1 to 5, that on the night of the occurrence an attack was made on the out-houses of the prosecutors and their buffaloes to the value of 150 Rs. plundered. That the prosecutors came to the rescue, but were driven back by the assailants and the four men noted in the margin* wounded as described. Radhe prosecutor named none of the prisoners before the darogah and only spoke of Nos. 2, 3 and 4, of the prisoners before the Magistrate, but recognized all before my Court, which may be accounted for by his wound and agitation on the morning of the occurrence and eleven months having elapsed since he deposed before the Magistrate, during which time the matter has been freely discussed and he has

* Radhe Aheer—wound 1 inch deep in thigh.
Hulloo Goala—wounds on elbows 1 inch deep.
Modun,—wound 1 inch deep on throat.
Bheenak,—2 wounds, one in belly and the other on finger, description not given.

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learnt to consider No. 1, as a principal. Meelun was equally silent as to the names before the darogah, but implicates all before the Magistrate and recognizes all before the Court.

The other two prosecutors swear to all four of the prisoners on every occasion. Witnesses Nos. 1, 2, 3, 4 and 5 swear to all the prisoners most clearly before the Court and Nos. 2, 3 and 5, have done so on all occasions. In the evidence of No. 1, taken before the darogah the name of Monjan, prisoner No. 1, and the evidence of No. 4 before the Magistrate, the name of Gopee No. 2, does not occur, but they both swear before me that they did name them.

Witness No. 8 swears that on the night of the occurrence, he met the man who is said to have inflicted the wound of which Gunnoo died, with prisoner No. 2, and he got a short answer and was ordered about his business when he asked who they were.

This constitutes the case for the prosecution. The prisoners all plead "*not guilty*." Prisoner No. 1, Monjun says he had nothing to do with the business, that there is an old quarrel, that the prosecutor Radhe drove his buffaloes away and there was a row. He calls three witnesses, the first of whom knows there was a dacoity, but knows nothing more, and the others know nothing.

Prisoner No. 2, Gopee pleads an *alibi*, says he was at Nasreegunge one *coss* off at the time. His two witnesses merely prove that *he* told them he was at Nasreegunge.

Prisoner No. 3, Shucharan says he was at his own house and his mother died on that night. His first witness declares he can't remember the date, but one day in that month his mother died and his second witness says he knows that one day he burnt his mother's corpse, but he does not know when.

Prisoner No. 4, Sobnath, says he was at a wedding on that night. His first witness speaks to character, his second as to his going his rounds, and his third deposes he was at a wedding at Koonj Beharry's, but he does not remember the date or month.

The Law Officer convicts Nos. 1 and 2, and acquits Nos. 3 and 4, on the grounds of their defence. I am not disposed to agree with the Law Officer in his acquittal, the same evidence on which he convicts prisoners Nos. 1 and 2, bears equally hard on the other two prisoners, and if the evidence is good on one point it must be received on all. The defences set up, appear to me quite untenable.

Shucharan No. 3, declares his mother died that night and two witnesses depose to his mother's death some time thereabouts, but they cannot say when, and this, which might have possibly occurred some days before the attack on the prosecutor's house, is opposed to the oaths of nine men, which is held quite sufficient by the Law Officer to convict the other two prisoners.

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Case of MONJAN and others.

Sobnath No. 4, merely says he was at a wedding on that night and one witness alone states he met him there, it would have been easy enough to call some of the family and prove the day of the wedding, if the prisoner wished to do so. I set no store by such an excuse and cannot agree with the Law Officer in believing his defence, backed by one witness who does not pretend to know when the wedding took place, in preference to the clear depositions of the four prosecutors and five good witnesses. I would therefore convict of theft, and plundering cattle and severely wounding the prosecutors, and recommend a sentence of ten years' imprisonment with labor in irons.

The Court will observe from my vernacular proceeding of the 28th to the committing officer, that I am quite aware of the irregularities of the calendar. I should have returned the case to have had a fresh committal made, but in the present state of this district with the rebels plundering the villages all around to within four miles of the Sudder station, I did not like to detain the prosecutors and witnesses from their homes one hour longer than absolutely necessary.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and G. Loch.) It is unnecessary, the Court observe, to point out the numerous discrepancies in the evidence as given before the Magistrate and the Sessions Judge; but it may be remarked generally, that contrary to what is usual, the memory of the witnesses as to what was done by each of the robbers, has become more clear and precise, the longer the period which has intervened since the occurrence; rendering it apparent to the Court that the evidence now given by the witnesses does not consist of what each saw and knew at the time, but is the result of subsequent conversation or collusion. It was a dark night when the attack was made on the *bathan.* The prosecutors Nos. 2, 3 and 4, and the deceased were roused from sleep and immediately engaged in a hand-to-hand struggle with the robbers; and in such proximity it is possible that one or two of them might be identified by the parties opposed to them, though there was no light to assist them in making the recognition; but it appears to the Court utterly impossible that, under the circumstances narrated on the trial, sixteen or seventeen men could have been identified as deposed to by the prosecutor No. 4, and the witnesses. It may be observed also that the evidence as to recognition becomes stronger the further one gets from the date of the occurrence. Prosecutor, No. 1, on 27th June, the day after the attack, deposes to having identified five persons not before the Court by their voices; prosecutor, No. 4, on 28th idem, deposes to having identified fifteen persons including the prisoners by their voices, and that Gopee, prisoner No. 2, struck him with a *loharbandha.* The witnesses, whose depositions were taken on 29th idem, identify

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sixteen or seventeen of the robbers and describe the weapons they carried. The Court cannot convict on such evidence. It is to be regretted that so serious a crime should go unpunished; but if prosecutors and witnesses, instead of stating what each saw and knew, choose to overdo the thing, as in the present instance, in order to ensure the punishment of a number of people, they defeat their own purpose and the ends of justice. The Court direct that all the prisoners be released.

SUMMARY CASE.

JULY,

1858.

SUMMARY CASE.

JULY 1858.

PRESENT:

J. H. PATTON, ESQ., *Judge*, AND G. LOCH, ESQ., *Officiating Judge.*

BHEEKOO SHEIKH,—PROSECUTOR.

versus

OJEER SHEIKH.

Moorshedabad.

1858.

July 18.

Case of OJEER SHEIKH.

Ruled that a gateway comes within the meaning of the word "building" made use of in Para. 2 of C. O. of 5th June, 1848, No. 13, and that setting fire to the thatch of the gateway must be considered "arson."

This case was referred to the Nizamut Adawlut under Section 5, Act XXXI. of 1841, and Circular Order dated 18th March, 1842, by Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad on the 18th June, 1858, with the following report.

On remarking in the Bengalee monthly statement of the Pundit of the Moorshedabad Circle, that he had sentenced the prisoner to imprisonment on a charge of arson, I sent for the case and found that he was charged with and convicted for, having wilfully set fire to the thatch of a house belonging to the plaintiff. As, however, the setting fire to a house is, by the Circular Order of the 5th June, 1848, No. 13, paragraph 2, arson and punishable only by the Sessions Court, I returned the case on the 16th instant with directions on the back of the Pundit's decision for the Magistrate to give reason why the sentence should not be quashed. The Magistrate in his reply, No. 380, of the 17th idem, declares that as it was the thatch of the detached gateway of the plaintiff's abode and not used as his dwelling-house, and as very little of it was burnt, the case came under paragraph 3 of the above Circular Order and was cognizable by the Foujdary authorities. It appears to me that the Magistrate is wrong, as paragraph 3 refers to incendiarism, which is to the burning of goods, and not to the wilful burning of the thatch of a house or building, which is arson, and it is not the actual damage sustained, which is the sole criterion as to the heinousness of a case of this nature, but the intent of the prisoner. It seems that the prosecutor and villagers speedily assembled and put out the fire, and therefore a small portion of the thatch was burnt, but there is nothing in the proceedings to show that had the fire not been extinguished, it would not have extended to the plaintiff's dwelling-house, or that the building burnt was detached from his dwelling-house. Under these circumstances, I submit that the Pundit's sentence

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July 18.

Case of OJEER SHEIKH.

Resolution of the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and G. Loch,) No. 419, dated 8th July, 1858.

It appears to the Court from a perusal of the record and of the Judge's letter of reference, that the place set fire to is comprised in the word "building" made use of in paragraph 2 of Circular Order of 5th June, 1848, No. 13, and consequently the setting fire to it, whether it be used as a dwelling or otherwise, is arson, a crime not punishable by the Magistrate. They, therefore, quash the proceedings of the Pundit, as having acted without jurisdiction; and direct that the prisoner be committed for trial in the usual manner to the Sessions.

REGULAR CASES.

AUGUST,

1858.

REGULAR CASES.

AUGUST, 1858.

PRESENT:

C. B. TREVOR AND H. V. BAYLEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

TRIAL NO. 1.
CHUCKA KOOROR

TRIAL NO. 3.
PURRESH DOME.

Moorshedabad.

1858.

August 11.
Case of CHUKA KOOROR and another.

Prisoners acquitted and directed to be released inasmuch as there is no sufficient evidence connecting prisoners with the commitment of the dacoity charged, and the evidence of the particular approvers corroborated solely by evidence as to the occurrence of the dacoity is insufficient for their conviction.

CRIME CHARGED.—*Trial No.* 1, 1st count, dacoity on the night of 16th February, 1849, corresponding with 6th Falgoon, 1255, in the house of Hurrochunder Shaha of Gadeebalye, thannah Mirzapore, zillah Moorshedabad; 2nd count, dacoity on the night of the 22nd March, 1852, corresponding with 10th Choitro, 1258, in the house of Anardee Mundle of Rumnah, thannah Dewanshurge, zillah Moorshedabad; 3rd count, having belonged to a gang of dacoits.

Trial No. 3.—1st count, dacoity on the night of the 13th September, 1853, corresponding with 29th Bhadro 1260, in the house of Gunganarain Dutt of Sagurdeegee, thannah Bhadoorehat, zillah Moorshedabad; 2nd count, dacoity on the night of the 16th April, 1855, corresponding with 4th Bysack, 1262, in the house of Ramsanker Dahy of Modooina, thanuah Bheerutpore, zillah Moorshedabad; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Hemchunder Kur, Deputy Magistrate for the suppression of dacoity, Moorshedabad.

Tried before Mr. J. E. S. Lillie, Additional Sessions Judge of Hooghly, trial No. 1, on the 18th June and trial No. 3, on the 16th June, 1858.

Remarks by the Additional Sessions Judge.—TRIAL NO. 1.—The prisoner pleaded *not guilty* to the first count, and refused to plead to the other counts. The meaning of those counts were repeatedly and clearly explained to him, there can be no doubt that he understood what was said to him; but he persisted in giving evasive answers. It is proved* that he freely and voluntarily confessed in detail before the Deputy Magistrate to having been engaged in five dacoities, including the two specified in the charge.

* Wit. No. 4, Lalbehary Boral.
" " 5, Hafez.

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August 11.

Case of CHUKA KOOBOR and another.

First count.—The prisoner's confession regarding this dacoity is corroborated by the evidence of two approver witnesses, their respective statements correspond and are confirmed in respect to general incidents by the record, which was received by the Deputy Magistrate after the confession of approver-witness No. 1.

Second count.—The prisoner's confession is corroborated by the evidence of the owner* of the plundered house, who proves the occurrence of this dacoity. The record shows that the prisoner was criminated with Foujdary confession† of one Ramlal Rishee, and that he was arrested.‡

* Wit. No. 3, Anardee Mundul.

† *Nuthee* No. 78, page 65.

‡ Page 18.

The prisoner's defence is, that he gains his livelihood by cultivation, that he has never been in Court, and that he has never been marked as a bad character.

The prisoner's confession has been satisfactorily confirmed, and I consequently convict him of having belonged to a gang of dacoits, and recommend that he be transported for life.

Trial No. 3.—The prisoner pleaded *not guilty*. It is proved§ that he freely and voluntarily confessed in detail before the Deputy Magistrate to having been engaged in five dacoities, including the two specified in the charge.

§ Wit. No. 6, Gopalchunder Misser.
" " 7, Joynarain Chuckerbutty.
" " 8, Lalbehary Boral.
" " 9, Hafez.

First count.—The prisoner's confession regarding this dacoity is corroborated by two approver-witnesses,|| their respective statements agree, and are confirmed generally by the record.

|| Wit. No. 1, Madhub Mistree.
" " 2, Fukeer Koomar.

Second count.—The prisoner's confession regarding this dacoity is corroborated by the evidence of the owner of the plundered house, who proves the occurrence. The record was traced in consequence of the prisoner's confession, Bhola Bagdee one of the gang mentioned in the prisoner's confession, was recognised by the witness, as he now states, and as he stated formerly,¶ and two or three others thus mentioned by the prisoner were committed* to the Sessions.

¶ *Nuthee* No. 187, page 5.

* Page 80.

Third count.—The prisoner is implicated in other dacoities by the above approver-witnesses, and by two others.† The prisoner has been twice arrested in cases of dacoity.

† Wit. No. 4, Manick Mall.
" " 5, Mutra Haree.

The prisoner maintains in his defence that if the statements of the approver-witnesses had been true, they would have been confirmed by the records, and he would have been apprehended.

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August 11.

Case of CHUKA KOOROR and another.

It has been proved that the detailed and circumstantial confessions of the prisoners were free and voluntary; there is no reason to suppose that he was influenced by any inducement; the correctness of the confessions are not challenged in his defence; and they have been confirmed by other testimony. I convict the prisoner of having belonged to a gang of dacoits, and recommend that he be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor and H. V. Bayley.) In regard to the case of Chucka Kooror, the Court observe that he confessed to the Deputy Magistrate; but pleaded *not guilty* at the Sessions as to both the counts. But that in regard to the first count, the confession has only the evidence of Mutra Haree and Fukeer Koora to support it; and in regard to the second count, there is only the evidence of the owner of the house, Anundram, to the occurrence of the dacoity; there is none to the identity of the prisoner as being concerned in the dacoity. The Court also note that this witness was not examined by the Committing Officer.

Under these circumstances, they do not consider that the conviction of Chuka Kooror can stand, and they acquit him, and direct his immediate release.

The case of *Purresh Dome* is similar. He also confessed to the Deputy Magistrate and denied his guilt at the Sessions. The evidence against him in the first count is that of the approvers Fukeer Koora and Madhub Mistree; on the third or general charge of belonging to a gang of dacoits, it is that of Fukeer Koora, Madhub Mistree, Chuka Haree, and one other. Thus, all the reliable evidence is that of one approver (not examined by the Committing Officer) on the second and one on the third counts. This is not, in the Court's opinion, especially under such circumstances as have come to their knowledge from the letter of the Additional Sessions Judge of the* 13th ult. No. 31, sufficient to warrant a conviction.

The Court therefore acquit the prisoner Purresh Dome, and order his immediate release.

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* *Copy of letter No. 31, dated 13th July, 1858 from the Additional Sessions Judge of 24-Pergunnahs to the address of the Register of the Sudder Court.*

I have the honor to submit copies of my decision in the trial of Government *versus* Ramjoy Harree and of a letter* I have addressed to the dacoity Commissioner relating to the false statements of certain approvers.

* No. 31, dated 10th July, 1858.

The evidence of Mutra Harree and of Fukeer Kooror having been accepted in several trials, it has become necessary to represent the matter to the Court, and I accordingly enclose a statement showing particulars of those trials.

At the time the statement was prepared, I was unaware that Madhub Mistree was in any way connected with the fraud; he had not been named as a witness to the Maheenuggur dacoity in the trial of Ramjoy Harree.

PRESENT:

J. H. PATTON, ESQ., *Judge*, AND G. LOCH, ESQ., *Officiating Judge.*

GOVERNMENT AND MUSST. JOOMAH

versus

TOJOOMOODEEN (No. 1,) WAZEER MAHAMUD (No. 2,) AND SADOO (No. 3.)

Backergunge.

1858.

August 11.

Case of TOJOOMOODIN and others.

Prisoners convicted of dacoity attended with murder, sentenced capitally.

CRIME CHARGED.—1st count, dacoity attended with the murder of Musst. Soobunja and carrying off property valued at Co.'s Rs. 48-9-3-10; 2nd count, knowingly and wilfully receiving and keeping the property obtained by dacoity.

Committing Officer.—Mr. H. A. R. Alexander, Magistrate of Backergunge.

Tried before Mr. F. B. Kemp, Sessions Judge of Backergunge, on the 2nd July, 1858.

Remarks by the Sessions Judge.—I tried this case alone under the provisions of Act XXIV. of 1843. This is a very bad case. The prisoner No. 1, Tojoomoodeen and No. 2, Wazeer Mohamed, are uterine brothers. The prisoner No. 3, Sadoo, is connected by marriage with No. 2.

The prisoners made full confessions before the police and the Magistrate, these confessions appear to me to have been perfectly voluntary and they have been sufficiently attested. In this court, the prisoners plead *not guilty* and call witnesses to character. They further urge that they were under the influence of some intoxicating liquor or drug when they were brought before the Magistrate, and are unable to recollect what they may have said on that occasion, in short they retract their confessions. This plea of being under the influence of intoxication is now resorted to in this court by every confessing prisoner who sees fit to retract his confession. The confessions of the three prisoners were recorded in the Magistrate's house in his immediate presence. There was nothing to distract the Magistrate's attention and it is quite impossible to believe that had the prisoners been under the influence of liquor or any intoxicating drug, that the fact should have escaped the Magistrate's notice.

The deceased woman was reputed to be rich, she was a widow and childless and lived with her relations in the same homestead, but in a separate house and not in commensality. The inmates of the "*baree*" appear to have been Nyemooddin witness No. 9, his wife Jeerah, witness No. 1, three infant children, the mother of Jeerah who is blind, deaf and bedridden, the prosecutrix Musst. Joomah and the deceased.

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On the night of the dacoity and on the previous night the witness, Nyemooddin No. 9, had been got out of the way by a neighbour by name Durvesh, the father-in-law of prisoner No. 2, and step-father of prisoner No. 3. The Magistrate has, I regret to say, acquitted Durvesh It appears that Nyemoodin can read the Koran. Durvesh on the pretence that he had seen bad dreams asked Nyemoodin to come at night and read the Koran to him, Nyemooddin suspecting nothing, went for that purpose for two successive nights the 1st and 2nd of May to the house of Durvesh and remained there on these nights.

I gather from the Mofussil confessions of the three prisoners, that it was their intention to commit the dacoity on the night of the 1st of May, Saturday, and that they would have done so but for a bad omen in the shape of the call of a lizard at the time they were setting out. On the 2nd of May, Sunday, the three prisoners with sticks and a sickle proceeded to the house of the deceased (I may here mention that the prosecutrix was then absent on a visit to her sister's husband). It appears that when the prisoners reached the house, the deceased and the witness Jeerah had gone out to obey a call of nature. It is usual amongst poor native women, and particularly in the interior of the country where there is much jungle to go out in company at night for the above purpose. The deceased was about to enter her house on her return, and the witness Jeerah had got as far as into the verandah of her house which is separate from the house of the deceased when the deceased was seized, thrown down, beaten, throttled and trodden upon. She died on the spot. The prisoners then dug up the earthen floor of the house with a *dao*, cut open the large baskets containing grain, smashed the pots, and instituted a strict search for money. It does not appear that they found much, for there was no truth in the rumour that the poor murdered woman was rich.

A silver *huslee*, a *tal*, two brass cups and some pice were found by the Police, belonging to the deceased and to the prosecutrix, as also two *dhooties* used by Hindoos when they perform *poojah* and a tool used by goldsmiths for moulding ornaments. For the possession of these very suspicious articles, the prisoners did not satisfactorily account before the Police.

The only eye-witness to the murder is Musst. Jeerah No. 1 her evidence before the Police, the Magistrate and in this Court is full and consistent in the main points. Her demeanour before me whilst delivering her evidence which took some time in recording, was carefully watched by me, and her whole conduct left a strong impression upon my mind that she was speaking the truth.

The prisoners as is usual in such cases implicate one the

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other in the actual murder. Before the Police and Magistrate Tojoomoodeen No. 1, stated that Sadoo alone committed the murder, he does not implicate his brother the prisoner No. 2. Before the police, Wazeer Mohamed No. 2, implicated his brother Tojoomoodeen and Sadoo, before the Magistrate only Sadoo. Again Sadoo both before the Police and Magistrate states that Tojoomoodeen committed the murder and that he, Sadoo, held the legs of the deceased to prevent her struggling.

Sadoo is very young, say eighteen, and I am of opinion that alone and without assistance, he could not have throttled and killed the deceased.

It is to be regretted that the Medical Officer was unable to hold a *post mortem* examination, the body was too much decomposed to admit of it, but the Mofussil inquest, report and the evidence of the witnesses* to the inquest go to prove that the deceased who was a healthy woman, died a violent death. Mud marks were observed on the body as if it had been trampled upon, the throat was swollen, and the tongue protruded from the mouth.

* No. 2, Neelmadhub Seel.
„ 3, Ramjoy Deo.
„ 4, Ramlochun Biswas.

The witnesses to the defence depose that the prisoners have hitherto borne a good character.

I convict the three prisoners of dacoity and accompliceship in the wilful murder of Musst. Soobunja, as also of knowingly and wilfully receiving and keeping property obtained by dacoity. There are no extenuating features in this cruel murder, beyond the fact that the prisoner No. 3, Sadoo, is very young; dacoities I regret to say are becoming common in this district and since this trial another dacoity attended with murder and other aggravated circumstances has been reported by the Police. A severe example is called for. I therefore recommend that the prisoners No. 1, Tojoomoodeen and No. 2, Wazeer Mohamed, be sentenced capitally and that in consideration of his youth and that alone, Sadoo No. 3, be transported for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and G. Loch.) The guilt of the prisoners is fully proved by their own voluntary confessions before the Police Darogah and the Magistrate, and by the evidence of Musst. Jeerah prisoner No. 1, who was able to recognise them by the light of the torch made by Wazeer Mahomed prisoner No. 2, from the thatch of one of the houses, and by the discovery in their possession of the plundered property belonging to the deceased. So thoroughly cold-blooded a murder, in the commission of robbery is, we think, seldom before the Court and calls for, as remarked by the Sessions Judge, a severe sentence. The deceased appears to have been reported wealthy, and the

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prisoners with their relative Durvesh, were for a long period, conspiring to rob her and at last determined to kill her and plunder her property; they took advantage of her sister's absence on a visit to a relative while Nyemoodin the only adult male in the house was inveigled away by Durvesh under pretence of reading the Koran to him, and the robbers proceeded armed with a club and sickle to the deceased's house with the fixed determination, as shown by their confessions, of killing and robbing the deceased, which they did. The Sessions Judge proposes a mitigation of capital sentence in the case of Sadoo prisoner No. 3 on account of his youth. The prisoner is about eighteen. The Court would have attended to the recommendation did it not appear from the record that Sadoo knowingly and thoroughly entered into the plot, and was as willing and active an agent in the perpetration of the crime as the others. By his own showing, he not only held down the deceased while Tojoomoodin prisoner No. 1, stamped upon her chest and throat, but immediately after closed and fastened Jeerah's door to prevent her running out and giving the alarm; and then stood on guard while his companions made a deliberate search for the woman's property. Taking up the floor of her house, breaking open the receptacles for paddy and destroying such of the earthen utensils as they supposed likely to be used for the concealment of money or ornaments. The Court sentence all three prisoners to be hanged.

PRESENT:

B. J. COLVIN AND A. SCONCE, ESQS., *Judges*, AND H. V. BAYLEY, ESQ., *Officiating Judge.*

GOVERNMENT AND NAKOOA MUG

versus

CHEMUN BURMAH ALIAS NGA TSAN MENG LIFE CONVICT, SON OF NOOGEE BURMAH ALIAS NGA SHOAY GYA.

24-Pergunnahs.

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August 23.

Case of CHEMUN BURMAH.

In a commitment under Act XVIII. of 1845; held that the prisoner should be sentenced capitally, the intent to cause death being considered by the majority to be proved from the circumstances of the case.

CRIME CHARGED.—That he being a convict sentenced to imprisonment and transportation for life, did on the 27th day of July, 1858, assault, cut and wound another convict named Nakooa Mug with the intention of thereby causing, and with the knowledge that he was likely thereby to cause, the death of the said Nakooa Mug.

Committing Officer.—Mr. H. Fergusson, Magistrate of the 24-Pergunnahs.

Tried before Mr. E. Jackson, Officiating Additional Sessions Judge of 24-Pergunnahs, on the 30th July, 1858.

Remarks by the Additional Sessions Judge.—The prisoner being already under sentence of imprisonment for life in the Allipore Jail has been committed under Act XVIII. of 1845, for having wounded another prisoner the prosecutor Nakooa Mug, with a knife in the throat and side with the knowledge that he was thereby likely to cause death, and with the intention of causing death.

Both prisoners are Burmese, and do not understand Bengallee. It has been necessary therefore to employ a Burmese as interpreter in the case. He was previously sworn to interpret correctly.

The prosecutor Nakooa Mug states that one of his friends Mumbooa Mug had had several disputes with the prisoner Chemun and his associate one Rajah, another Burmese prisoner, the latter being in the habit of stealing and pilfering things from the other prisoners. It would appear from the evidence of witness No. 1, that the prisoner Chemun had on the same day on which he committed the assault threatened with an oath that he would kill the prosecutor. A short while after, while he was sitting at his work with the witnesses Nos. 1, 2 and 3, the prisoner came up quietly and without saying a word struck a knife into his neck, and before he could be seized he again attacked the prosecutor and struck him several blows with great force on the side and one on the hand. He was then seized from behind; and the knife was wrested out of his hands.

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Witness No. 4, Sheikh Mungloo, native doctor, dressed the prosecutor's wounds, and describes them. He states that they were not very severe, but that had the wound on the neck, which was half an inch deep been a little to one side, it might have divided an artery and caused death.

The prisoner acknowledges the assault in this Court, as he did before the Magistrate, but states that he had no intention to cause death, he only desired to cut the prosecutor's eyes out.

The case was tried with the assistance of the law officer, who agrees with me in the conviction of the prisoner under Act XVIII. of 1845, of the charge on which he is committed. Seeing no ground for mitigation, I am bound to recommend that the prisoner be sentenced capitally.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin, A. Sconce and H. V. Bayley.)

Mr. B. J. Colvin.—I would sentence the prisoner as proposed, to death.

I think his purpose was deadly, when he not only gave the first wound on the neck, but returned to the attack and dealt blows indiscriminately. I think his defence of intention only to cut out the prosecutor's eyes is disproved by the direction of his first attack on the neck, and considering the vicinity of the artery, he certainly may be presumed to have known that what he was doing, was likely to cause death, notwithstanding the alleged bluntness of the knife.

Mr. A. Sconce.—I am not satisfied that the prisoner Chemun can be convicted of stabbing the prosecutor Nugooa with the intention of killing him. No doubt there are indications of a violent attack; but the injuries sustained were slight, and the knife used was short and blunt. I would convict for the offence of stabbing only; and sentence the prisoner to suffer corporal punishment to the extent of thirty-nine stripes.

Considering the alternative modes of punishment prescribed by Act XVIII. of 1845, in the cases of convicts actually sentenced to imprisonment for life being again convicted for another offence, it seems to me very important that Magistrates in committing convicts for trial under that Act, should set forth evidence respecting the past conduct of the prisoner under trial, if he had ever been punished for disorderly conduct or for any offences committed within the jail; and also evidence regarding the demeanor of other prisoners in case the peace and good government of the jail should have been violently interrupted. Even if a convict be convicted of doing an act with the intention of causing death, a sentence of death is not imperative: and it seems to me that all the circumstances which may be permitted to affect the judgment of the Court in im-

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Mr. H. V. Bayley.—This case is a commitment under Act XVIII. of 1845. The preamble recites that "It is expedient that offences committed by convicts sentenced to imprisonment for life should be punished with greater severity than such offences are punished with in other cases." Section 1 provides that any such convict "who does any act with the intention of thereby causing, or with the knowledge that he or she is likely thereby to cause the death of any person shall, upon conviction thereof before the Sessions Court, subject to confirmation by the Sudder Court, be punished with death, or with transportation for life, or with corporal punishment not exceeding thirty-nine stripes, whether such conviction does or does not by such act cause the death of any person."

The facts clearly proved on evidence by witnesses Nos. 1, 2 and 3, are that the prisoner first deliberately, without a word, attacked Nugooa, the wounded man, with a knife, seizing his head with his left hand and striking the throat with the knife in the right; that he then was partially interfered with by other convicts; got free again; and again attacked the prisoner with the knife; and was then overpowered, and the knife taken away; that the blows given with the knife were made with violence; and that there had been a threat previously made by the prisoner. The facts proved by witness No. 4, the native Doctor, are, that a wound one inch long and half an inch deep was in the left side of the throat, and on the left side under the arm a *skin* wound seven inches long, another on the shoulder one inch long, and a third on the head one inch long; that the wounds were made by a blunt knife; that such a knife was not likely to cause death unless it severed an artery.

The prisoner pleads that he had a quarrel with Nugooa as to theft of his pice, and wished to cut out his eyes, but did not intend to kill. This defence is in no way substantiated by evidence.

The question is, do the facts call for the extreme sentence of death, or the minor sentences of transportation for life, or thirty-nine stripes provided by the same law.

I think the facts quite take the case out of the category for which thirty-nine stripes would be a proper punishment. As to transportation for life the prisoner is under that sentence. Then are the facts such as to call for the capital sentence provided by the law cited?

We must always bear in mind that the special law contemplates in the preamble, that the punishments in cases such as this shall be more severe than the ordinary law provides.

The intention to kill is to be presumed from the instrument, a knife, the locality of the wounds, and the violence with which

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the blows are deposed to have been struck. The additional facts shewing this intention are, that the first blow, before he was interfered with, was deliberately directed to the throat, and his reckless repetition of the blows with the same instrument after he got away from those who held him, and the striking on the side on the shoulder, and head; and prisoner *not* ceasing his attack till overpowered and the knife taken from him.

On the other hand, we have the evidence of witness No. 4, that the knife was *not likely to cause* death, except it severed an artery.

I cannot, however, believe that this last fact was in the contemplation of the prisoner, or known to him, but on the contrary I think that, as far as the prisoner knew, he was doing an act *likely to cause death.*

I also cannot but feel from the facts above stated by me, and from the evidence of witnesses Nos. 1, 2 and 3, that there is a strong legal presumption that the intention of the prisoner was to kill.

I cannot therefore help coming to the painful conclusion, that the law under which this commitment is made, contemplated that in such a case as this, the prisoner should be sentenced capitally. I would sentence him accordingly.

REGULAR CASES.

SEPTEMBER,

1858.

REGULAR CASES.

SEPTEMBER, 1858.

PRESENT:

B. J. COLVIN AND A. SCONCE, ESQS., *Judges* AND C. B. TREVOR, D. I. MONEY AND H. V. BAYLEY, ESQS., *Officiating Judges.*

GOVERNMENT—PROSECUTOR

versus

MUSSAMUT AMIRUN (No. 1,) MAHOMED NATIQ CAZEE, (No. 2,) AND TOOLSEERAM (No. 3.)

Bhaugulpore.

1858.

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Case of MUSST. AMIRUN and two others.

Two Judges concurred in convicting the prisoner Amirun of the crime charged as an offence punishable by Mohammedan Law and the precedents of the Court, but differed as to extent of punishment. On reference to a third Judge, he pronounced for release of the prisoner, as the Magistrate had acted *motu suo* without a complaint lodged before him. A fourth Judge concurred with the third in

CRIME CHARGED.—Prisoner No. 1, 1st count, purchasing or taking in lease for the period of 90, 91 and 95 years, girls, being minors of the age of seven years and upwards, and free born subjects of the State, for the purpose of making them prostitutes; 2nd count, registering such deeds in the Cazee's Court. No. 2, with being an accomplice in the crime and with aiding and abetting in it by registering the deeds Nos. 402, 661, and 1419, dated 25th July, 1848, 15th June, 1847, and 16th August, 1855, respectively. No. 3, as an accessary before the fact regarding the document numbered 1419 of 16th August, 1855 as above, aiding and abetting in writing the said document.

Committing Officer.—Mr. O. Toogood, Officiating Magistrate of Monghyr.

Tried before Mr. T. Sandys, Sessions Judge of Bhaugulpore, on the 10th May, 1858.

Remarks by the Sessions Judge.—Mr. Toogood, the Officiating Magistrate of Monghyr, *motu suo* apparently, discovering a practice of selling or leasing native girls, both Mahomedans and Hindoos, to keepers of brothels for the purposes of prostitution under deeds of sale or lease, traced Mussamut Amirun, prisoner No. 1, in possession of two* about ten to sixteen years of age, together with their original deeds of sale or lease, as noted in the Calendar, together with a third for another girl.

* Wit. No. 13, Musst. Chando.
,, ,, 14, Musst. Mohree.

These deeds of sale are in the shape of the lease of personal service; that for Chandoo, styled a girl, seven years of age, being for ninety years subjecting her as well as her offspring to the conditions of the lease; that of Mohree, also styled a girl of seven years, is for ninety-five years, but conditioned only as

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personal without including her offspring. All three gave minute personal descriptions of the subjects leased or more properly "enslaved." This is also the case in a great number of documents of the same kind registered by the several Cazees of this district, as subsequently examined by me.

These documents having been duly registered by Mahomed Natiq Cazee of Monghyr, prisoner No. 2, and one of them No. 1419, being in his then writer Toolseeram's prisoner No. 3's handwriting, they were both together with Mussamut Amirun, committed by the Officiating Magistrate to this Court to stand their trial on the counts shewn in the Calendar, which refers to the Officiating Magistrate's* Nos. 269 and 219 for the grounds of commitment, copies of these letters as well as my replies† thereto are herewith annexed.

† No. 26 and No. 90.

* *Copy of letter No.* 209, *dated* 13*th April*, 1858, *from the Officiating Magistrate of Monghyr to the Sessions Judge of Bhaugulpore.*

I have the honor to report for your information and that of the Hon'ble the Lieutenant-Governor of Bengal, that the Cazee or native Mahomedan Judge by name Mahomed Natiq, appointed by the Government for the purpose of preparing and attesting deeds of transfer and other law papers, celebrating marriages and performing such religious duties as are prescribed by the Mahomedan Law, has been in the habit of attesting deeds of sale of native girls both Mahomedan and Hindoos, to keepers of brothels, for the purpose of prostitution, and registering such in his books which are deposited for record and reference in your Court. You will observe that one of the deeds, copy of which I annex, is to this effect that Sheikh Fukeerbux, a Mahomedan and Resident of this city agrees to farm out his daughter; the word sell is purposely avoided, by name Chandoo, aged seven years, to Mussamut Amirun, a keeper of a brothel, living in this city, for a period of ninety years, for the sum of Rs. 12 and 8 annas, which he has received in cash, and the said Mussamut Amirun, the brothel-keeper, is empowered to exact any kind of service from this girl, and for which service she engages to keep the child in clothes and food, and in the event of any children being born to this girl, whether male or female, the woman, the purchaser abovementioned, is to have possession of them for ever The document concludes with Sheikh Fukeerbux, the seller, and Mussamut Amirun, the brothel-keeper, the purchaser, agreeing to abide by these terms, in witness thereof the signature of certain names is attached and the document is duly signed and sealed by and in the presence of the Cazee and registered in his book No. 419, pages 82 and 83, dated 11th August, 1855.

The other copy which I annex, is that of the sale to a Mahomedan of a Hindoo girl of Rajpoot caste of the age of seven years, who is stated to have been recently made a Mahomedan. The document is not signed by, but bears the seal of, the Cazee's Court and is registered No. 166, page 135, and dated 15th June, 1847. The third copy which I forward is like the second, the same class of document as the first, but does not bear the signature though it does the seal of the above officer. It is registered No. 402, page 177, without date, the deed itself being dated 25th July, 1848. These documents you will find amongst the record of your Court.

the order of acquittal both on account of the indefiniteness of the offence and the want of authority on the part of the Magistrate to take cognizance of the same, and the case in consequence went to a fifth Judge who agreed with the first and second Judges in thinking that the crime with which the prisoner was charged was a misdemeanor under Mohammedan Law, and with the third and fourth in holding that, without a formal complaint in writing, the Magistrate, under the Law of procedure current in the Mofussil had no authority to take cognizance of the misdemeanor chargedagainst the prisoner. Under the opinion expressed by the third, fourth and fifth

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Judges the prisoner was declared entitled to her immediate release.

The main facts that Amirun is a brothel-keeper and that the two girls, Chandoo and Mohree, were purchased and

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I am told that this system of selling children for prostitution and attesting and registering such documents in the Cazee's Court, is carried to an alarming extent in this district, and that if the matter is properly enquired into, other equally wicked and illegal documents may be found, carrying with them the character of a judicial sanction.

Act V. of 1843, amended the law regarding the condition of slavery and enacted, that no public officer shall, in execution of any decree or order of Court, or for enforcement of any demand of rent or revenue, sell or cause to be sold any person, and I see in Vol. 6 page 4 of the Sudder Courts reports, that a sentence of five years' imprisonment was passed upon persons attempting to sell girls for prostitution. I shall therefore take immediate measures for bringing the parties to justice, and trust you will suspend the Cazee from office in order that he may be prosecuted by me as an accessary to the fact.

I have had considerable difficulty in obtaining these documents. I am told that messages have been sent from house to house not to give them up to me. The Cazee himself informs me that the books which have been filled up have been forwarded to your Court to be attested and countersigned by you. You will doubtless be able to obtain further proof of this iniquitous relic of the barbaric operation of the Mahomedan Law, which, though superseded by our civilized Codes, is proof that such is still practised in the country by Mahomedan Officials appointed by the Government. No legal proceedings can be had on these documents in the event of the slaves running away, but they have a force and weight in themselves, and, as a native replied to me, the writing such on stamp paper, the attestation of it by witnesses, and the seal and signature of the Cazee to the deed, give it the character of a legal and binding document and make it an instrument of terror to those who wish to free themselves from such bondage.

In connection with the Cazee I have another matter which I wish respectfully to bring to the notice of the Government. I found, on assuming charge of this office, parties filing powers of attorney, invariably took such documents to be attested by the abovenamed officer This practice was sanctioned by Lord Ulick Browne when Officiating Magistrate of this district, because the custom obtained in the Collector's Court, vide copy of his accompanying proceeding dated 16th June, 1856.

This order permitting only the Cazee to attest a power of attorney for authority to act in my Court is clearly illegal, and also a hardship inasmuch as that officer charges six and half annas for attesting such document, and this with the law directing petitions to the Magistrate in criminal cases to be written on stampt paper of the value of eight annas, increases the price of criminal justice at the commencement of the case nearly one hundred per cent. besides a further cost of eight annas for the stamp paper on which the power of attorney is written. I have consequently reversed this order, and directed powers of attorney to be attested in my Court, for which of course no charge is made, and in all my subordinate Courts.

The following, I am told, is the scale of fees exacted by the Cazee of Monghyr for attesting papers.

For the power of attorney Judge's Court Bhaugulpore, ...	1	5	6
„ Ditto ditto, Commissioner of revenue, ...	1	5	6
„ Mookhtarnamah Judge's Court Bhaugulpore, ...	0	10	6
„ Ditto, Moonsiff Court's, Surijgurrah, ...	0	12	0

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maintained by her for the purposes of her profession is amply apparent by the original record before the Magistrate, even if

For the power of attorney Magistrate and Collector's Courts,	0	6	6
„ Mookhtarnamah, Sudder Allah's Court, Monghyr, ...	1	0	0
„ Power of attorney on 4 Rs stamp paper, Monghyr, ...	1	0	0
„ Ditto ditto, other districts, ...	2	0	0

Section 8, Regulation XXXIX. of 1793, directs that Cazee's are not to exact fees for drawing up or attesting papers and other matters which it has been customary for them to perform, excepting such as the parties concerned may voluntarily agree to pay, and has hitherto been the custom. I need scarcely say that such rules especially for a native are open to the greatest abuse, and, I am told, the present Cazee, who is a brother of the Sudder Allah, the highest native judge in this district, makes several hundred rupees a month by fees alone. The scale above would warrant such a supposition. I would venture to suggest, if it be necessary to keep up authoritatively such a Government official, his duties should be more strictly defined, specially with regard to a scale of fees chargeable for attesting and registering deeds, but I presume the real duties of a Cazee are confined exclusively to that appertaining to the Mahomedan religion and rites and this would appear from the fact of a Register of deeds having been appointed in every district throughout India under Act XXX. 1838, such office being generally held by the Magistrate or Civil Assistant Surgeon of the district, but why by the latter it would be perhaps difficult to discover, such office being so foreign to his profession. I am told that deeds of agreement, sales and bonds are registered both by the Cazee and Register of this district, and that both documents are valid in law or at least open to judicial question. The Government directs all documents relating to its farms, securities, and the like, to be registered by the latter official. I venture to think the delegating such joint and similar powers to two different officials in the same jurisdiction is opening the test of the validity of such documents to much unnecessary litigation in our Courts.

I have issued a notice throughout the whole of my district, to the effect that such slavery and documents are contrary to the orders of a civilized Government, and persons detected in committing such acts will be punished with utmost rigour of the Law, and that all who have been bound by such illegal documents are declared free subjects of the State, but I have deeds before me proving that this system has been common for the last twenty years. Some of these, though legally drawn and on stampt paper, have not been registered by the Cazee either through fear of detection or for some other reason. The whole subject in my opinion calls loudly for a further and more powerful interference of the legislature.

In conclusion, I should mention that, in conversation with the Sudder Allah, the brother of the Cazee, upon the subject of the sale of children, he informed me he was aware his brother registered these deeds though contrary to law. I asked him why he had not brought the fact to the notice of the Magistrate or the Government direct, to which he gave no reply. This official, in addition to holding the high position of principal native judge, exercises also the full powers of a Magistrate under me within this district. The fact is that rarely if ever, a native official unless an immediate benefit accrues to himself, really and truly assists in the administration of the Government. Of this fact there has been lately the most undeniable proof.

P. S.—The Cazee has this day submitted his sunnud in original, copy appended, which document purports to emanate from the Sudder Court, but does not bear the signature of any of its Judges.

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their own personal appearances did not confirm the fact. In addition to the original documents themselves, there is also the

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Copy of letter No. 219, *dated the* 19*th April,* 1858, *from the Officiating Magistrate of Monghyr to the Judge of Bhaugulpore.*

In continuation of my letter No. 209, dated 13th instant, I have the honor to state, for the information of yourself and the Hon'ble the Lieut.-Governor of Bengal, that whilst engaged in the trial of the case noted, in the margin,* I was informed by the pleaders of my Court and others, that slavery exists in an immense degree throughout the whole country, and is entailed for ever on the progeny. They argued that it was sanctioned by the Government, and quoted the following law and ruling of the Sudder Court upon the question. That under Regulation III. of 1832, "and Construction of the Sudder Court No. 955, the transfer of slaves for money or other consideration between persons residing within the British territories is not prohibited. It merely prohibits the removal of them for the purpose of traffic from one Territory, British or Foreign, to any other Territory dependant on this presidency. Consequently those slaves only are entitled under its provisions to their liberty who have been so removed subsequently to the enactment of Regulation X. of 1811."

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In 1832 Regulation III. was passed extending the provisions of Regulation X. of 1811, in consequence of the extension of the possessions held under the presidency of Fort William subsequent to that enactment. The Regulation (III. of 1832,) is comprised in 2 Sections, and rules that slaves removed for purposes of traffic from any province British or Foreign, into any province subject to the presidency of Fort William, or from any province so subject into another are considered free, and Clause 2 of this Section authorizes for selling as a slave a man, woman, or child, so removed, the penalty or imprisonment for six months and a fine to Government not exceeding 200 Rs. commutable if not paid, to a further imprisonment of six months.

The case noted in the margin* I find was tried by the Sessions Judge of Rajshahye in March, 1840, who was of opinion that a sentence of one year's imprisonment would be sufficient for the crime of which the prisoners were convicted, viz. "forcibly confining certain girls and taking them from place to place and attempting to sell them," but as the crime was not specially punishable under the Regulations, that officer referred it for the final orders of the Sudder, the Judges of which Court differed in opinion as to the power to punish the prisoners, but appeared unanimous that the system had received the sanction of custom in the lower parts of Bengal and that if enquiries were made, believed it would be found that the supply of girls for the purpose of prostitution is obtained by purchasing them, when young, from parents or friends, and that they are looked upon as the property of the buyer, and that the profit arising from this prostitution or from the sale of girls is as much considered the right of the owner as it would be if any animal were sold. It was admitted that this fact called for the interference of the law, and two of the three judges being of opinion that though the "proof goes to the sale," as there was no actual violence the prisoners must be acquitted.

* Government *versus* Musst. Golab Peshagur and others.

The points raised having been submitted for the consideration of the other judges, they directed that the papers be referred to the law officer of

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Wit. No. 1, Bhuttoo.	testimony of three subscribing witnesses, one of them, Khemum, being a Chowkeedar, and two others in verification of the
" " 2, Rummun.	
" " 3, Khemun.	

documents, and their being registered by Cazee Mahomed

their Court with instructions to state whether under the Mahomedan law any, and if any, what offence had been proved against the prisoners.

The law officer replied that "the selling of free born persons was prohibited by the Mahomedan law, and as the attempt to do so was clearly proved, the prisoners were punishable at the discretion of the Court." Consequently they were, on the 8th May, 1841, sentenced to five years' imprisonment with labor.

Thus, it appears, the great question of slavery as well as the question of proof was entrusted by a full bench of the Sudder Judges, for decision to the Mahomedan Law Officer of their Court who, on being called upon to state whether, under the Mahomedan law, any, and if any, what offence had been proved against the prisoners, ruled that under Mahomedan law, the selling of free born persons was prohibited and as the attempt to do so was clearly established, they were punishable at the discretion of the Court, and sentenced to five years' imprisonment, with labor, and the proceedings, it appears, were submitted to the Government with the view of eliciting an enactment suitable to the occasion, but nothing appears to have been done further in this important question until 1843, when Act V. was passed, which declares and amends the law regarding the condition of slavery within the territories of the East India Company. The Act, which consists of four short Sections, directs that no person is to be sold as a slave in satisfaction of a decree, or a revenue demand, or on the right to the compulsory labor or services of any person on the ground that such person is in a state of slavery; that no right of slavery is to be enforced in the Company's Court; that the rights possessed by or derived from a slave are protected, and that offences against slaves are penal as if done against a free man. Thus, Government clearly does not recognize slavery within its territories, though it has not expressly declared its abolition. Hence deeds of such sales or leases as shewn in my letter to your address, No. 209 dated the 13th instant, are drawn up on the Government stampt paper, sealed, signed, and registered by Cazees or Mahomedan Law Officers of districts and filed for record and reference in the Civil and Sessions Judge's Courts.

It is therefore, evident that the provisions of Act V. of 1843 have not been properly carried out in this district, and indeed the Act would have been more intelligible had it repealed all former Acts and Regulations upon the subject, and declared in a few words that slavery was abolished. The Act in question provides no punishment for committing the offence of selling persons, and we have only the precedent of the Mahomedan Law Officer of the Sudder, backed by the decisions of the Judges of that Court in the case abovementioned on which to act, and the general Regulations in force.

I would therefore, venture to suggest since slavery is as unrepressed in these parts as it was when we first took possession of the Behar province, that such a grave and criminal offence should not be punishable at discretion, but that it shall be made felony for any person or persons to lease, sell, or in any other way dispose of, either directly or indirectly, any man, woman, or child, the subject of the Government, or those living under its protection, and punishable with penal servitude according to the nature of the offence or circumstances of the case for any period not exceeding seven

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Wit. No. 10, Nuboont Hossein.
" " 11, Sukhlall.
" " 12, Syud Fusechoodeen.

Wit. No. 4, Gourcedyal Mooktear.
" " 5, Niamut Alli Khan.
" " 6, Sukhawunt Alli.
" " 7, Toolseeram
" " 8, Punchunlall.
" " 9, Parusnath Punday.

Natiq. But this was secondary to the prisoner's own admissions which fully recognized the fact. These were treated as confessions in the Calendar, and the within as witnesses thereto, but as they were simply defences or interrogatories uncertified to as confession, they could not appear on the record of this Court as confessions. Before this Court the oral evidence for the prosecution shewed itself thoroughly tampered with. The three

years' or to imprisonment with hard labor for any term not exceeding three years.

I have now concluded the case under trial before me and committed as per margin, the prisoners to the sessions and request the favour of your at once taking up the case, the papers of which together with the parties, will be forwarded to you to-morrow. It appears that Amirun, the brothel-keeper, confesses to the whole transaction, but states that she did not purchase the children, she only had a lease of them for a term averaging from 90 to 100 years, and that she registered the deeds before the Cazee. She states also that she has purchased ten girls since she kept a brothel, and four children born from these girls are now living, also that she is the owner of all of them; some were Hindus, some Moosulmans, but she made them all Moosulmans. She says several other women do as she has done. She paid quarter to the Cazee for registering each deed.

Amirun, brothel-keeper, charged with purchasing or taking in lease for the period of 90, 91 and 95 years, girls being minors of the age of seven and upwards and free born subjects of the State for the purpose of making them prostitutes; 2nd, Registering such deeds in the Cazee's Court.

Cazee Mahomed Natiq charged with being an accomplice in the crime and with aiding and abetting in the same, by registering the deeds Nos. 402, 661 and 1419, dated respectively 25th July, 1848, 15th June, 1847, 16th August, 1855.

Toolseeram charged as an accessary before the fact.

The Cazee or Mahomedan Law officer of this district, being put on his defence, says: "I acknowledge to have registered and sealed these three deeds No 661 dated 15th June, 1847, No. 402 dated 25th July, 1848, No. 1419 dated August 16th, 1855, being deeds of leases, for the period of from 90 to 100 years, of girls from the age of seven years, some of them Hindus, who have been made Moosulmans, to Amirun, the lessee, a brothel-keeper of this city. I know the purport of the deeds. It is customary to register such in all districts and by all Cazees. I never was told not to do so. I am an expounder of the Mahomedan law and know that it is forbidden to sell free born persons. These were not sold. They were given in lease and though the progeny of these children is to be for ever, as shewn in the deed, the property of the brothel-keeper, still the deed has in my idea the character only of a lease and it is not a sale." This man is, as you are aware, the brother of the principal native judge of this district.

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first witnesses before the Magistrate even pretended the registry had taken place before another Cazee at Reyseer, now deceased,

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I have released the four women noted in the margin* from the bondage to Amirun. Of the other two, aged about 10 and 7, and now called both by the name of Chandoo, one has a mother living at Bhaugulpore for whom, I have sent to place on her trial for selling her daughter. The other is an orphan. I have placed both these children in the Charity Hospital until I can make some other arrangement for their care and safety.

* Sumulea, age 25, no children alive.
Seeseur, ,, 20, Ditto.
Ramsun, ,, 35, Ditto.

I have issued a proclamation through the district, to the effect that the selling or leasing of free born subjects is illegal and that Cazees, Naib Cazees, and all persons registering such deeds, or implicated directly or *indirectly*, will, on conviction, be punished according to law and that all such who have been sold or leased as slaves are hereby declared free.

I trust you will at once forward copies of my letters upon this subject to the Honorable the Lieutenant-Governor of Bengal, with a view to the whole subject being enquired into. I feel sure it is only necessary to bring to the notice of the Government the fact, that up to this time slavery exists to a great or less extent in the country, to secure an immediate strengthening of the law and a universal sensation of abhorrence of the practice under a Christian Government.

P. S.—The three deeds are herewith enclosed.

Copy of letter No. 26 *dated* 16*th April*, 1858, *from the Judge of Bhaugulpore, to the Magistrate of Monghyr.*

I have the honor to acknowledge the receipt of your letter No. 209, of the 13th instant relative to illegal registrations by the Cazee of Monghyr.

I, at once, examined his books, as usual, on completion, deposited in my record room, simply for purposes of record and reference, and not for my attestation and signature as supposed. I find the copies of the documents forwarded by you correspond with his registers, although they have been filed in a slovenly and irregular manner. I have placed his registers as well as all those for the district generally, under separate charge and rigid scrutiny and am prepared to pursue a general enquiry into them, dependant and in abeyance on the one originated by and now depending before you.

The matter calls for rigid inquiry, and accordingly, in conformity with para. 4 of your letter, I have this day suspended the Cazee and directed him to attend your Court. But the investigation is as yet in too incomplete and informal a shape to admit of report to superior authorities. On receipt, however, of your final proceedings and the completion of such further formal proceedings as may then become requisite on my part, the whole subject shall be fully submitted to the superior Court, for their information and orders.

As regards the Cazee's attesting powers of attorney, the mischief seems to have originated in the neglect of the district Courts to keep their own Courts open for such purpose and thereby, in point of fact, negligently causing the registration before the Cazee to become obligatory, instead of voluntary, whilst the latter alone is the rule of practice for every description of document registered by a Cazee. On the same principle the district Register of deeds for every other description of document acts as a counter-check on the Cazees. I had occasion lately to call on the Principal Sudder Ameen of Monghyr for a return of all powers of attorney gratuitously attested in his Court, as is the practice in all other Civil

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and Mahomed Natiq's predecessor, and this they again repeat before this Court, but anything of the kind is at direct variance to the original documents themselves, which tally also, with the corresponding books deposited by Cazee Mahomed Natiq in the record-room of the Civil Court. Before this Court, Musst. Amirun sets up the pretence she had become a Magdalene and kept a shop, and was only now anxious to maintain the girls respectably and get them married, to which effect she cites witnesses. The three first witnesses also help her, saying she has now become a shop-keeper and the two girls themselves in like manner; the youngest, Chandoo, is looking out for her marriage, and the other, Mohree, with a child in her arms, lives separate with its unnamed father, but all this is at direct variance to their statements before the Officiating Magistrate, and, in the case of the girls, more particularly so, for Chandoo told the Magistrate "she was being brought up as a prostitute," and Mohree "that she was a prostitute and paid over her earnings to Amirun." It is necessary to view the case from beneath this cloud of tampering, or its enormities fall smothered under a heap of degrading customs, habits, and feelings, which only like to riot after their own kind, and which, as this trial sufficiently illustrates, it secures by indirect courses, what it dare not do directly. There can have been but one common, though silly object, in tampering with such plain facts, whether in the getting up of the pretended verification and registry before another, the deceased and out of date Cazee at Reysur, a stale substitution, or in Amirun's being a Magdalene. Mr. Toogood complains, para. 5 of his No. 209, "I have had considerable difficulty in obtaining these documents, I am told that messages, have been sent from house to house not to give them up to me." The general feeling in favor of slavery reported in para. 1 of his No. 219 as

Wit. No. 13, Musst. Chandoo.
" " 14, Musst. Mohree.

Courts, and it was "*nil.*" This neglect calls for further explanation and enquiry, but, in the meantime, I have warned the Principal Sudder Ameen to correct it for the future.

Copy of extract from letter No. 90, *dated* 21*st April,* 1858, *from the Judge of Bhaugulpore to the Magistrate of Monghyr.*

I have the honor to acknowledge your No. 219 of 19th instant, just received.

On the conclusion of the trial therein referred to, the matter will be submitted to superior authorities through the ordinary channel. It would be premature and hasty to do so at once, first, because the trial itself can be immediately brought to a close, for whenever you forward the parties, it shall be taken up at once, and the fullest information will then be before me on the subject, and, next, my own enquiries, relative to the prevalence of the practice reported on throughout my jurisdiction, by that time, will be complete, though as far even as they yet go, they amply confirm the prevalence.

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also the prevailing practice, as will be seen in the sequel, ascertainable even from the records deposited in the Civil Court, are quite sufficient of themselves alone to raise up master influences above all law in a case of this kind. Indeed in this very trial itself, we have no less than three chowkeedars subscribing witnesses to document No. 402, and two to No. 661. Thus, in point of practice, the police, under the garb of chowkeedars, first patronize such degrading transactions, and then, as remarked by Mr. Toogood, para. 5 of his No. 209.—"The writing such on stampt papers, the attestation of it by witnesses, and the seal and signature of the Cazee to the deed, gives it the character of a legal and binding document, and makes it an instrument of terror to those who would wish to free themselves from such bondage." A form is thus gone through under a sham of criminal and civil authority, which in the spirit of the people, sets the real ones at defiance. It is not a matter of much astonishment, therefore, that direct formal evidence in a case of this kind, should fail to reach this Court.

I have already adverted to Amirun's defence before this Court. To the Magistrate she admitted that during her profession as a Tuwaief, she had bought ten girls, some of whom had had children and "she was proprietress *(malik)* of the whole." It was their pleasure "*khoosee woh sub ka*" if they became prostitutes. Cazee Mahomed Natiq told the Magistrate that he was aware Amirun was a "Tuwaief." He could not say how many documents of the kind he may have registered for her, but he had registered many of the kind both for Tuwaiefs and other classes. He did not regard leases of personal service, together with offspring, for such long periods as ninety to ninety-five years, as deeds of sale, but as simple leases. His defence before this Court was that at the time of the registry, no one had represented that it was for a Tuwaief or he would have declined making it. He had acted in accordance with the regulations, Mahomedan law, and universal practice, which had been even followed by the register of deed's office, in proof of which he filed two authenticated copies of deeds registered by the register of deeds, Bhaugulpore; one lease of a girl Seeroo, five years of age, to Gouree Tuwaief for sixty years, registered 23rd July, 1847, pages 36 and 37, Vol. XLIV. and the other for common services, apparently of several males and females, together with their offspriug for sixty years registered 26th July, 1847, pages 40 to 42, Vol. XLIV. When questioned what was the use of registering such kind of documents which had become invalid under Act V. of 1843, as published in the *Agra Gazette*, 5th

N. B.—I have called on register of deeds Bhaugulpore and Monghyr to report how many cases of these kinds are traceable in their registers between the years 1843 and 1858. Result can follow hereafter, if necessary.

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May, 1843, page 148, he replied that he did not receive the *Gazette*. The register of deeds had also acted contrary, notwithstanding. Besides, these documents concerned leases which the Act did not. Toolseeram, as shown in the Calendar, is only very partially concerned, and acknowledges having written the document, being at the time, Cazee Mahomed Natiq's writer.

The trial was heard under Section 3, Regulation VI. of 1832, with the assistance of Mr. W. Wright, Principal Sudder Ameen, and Mr. J. Dacosta, Sudder Moonsiff, as assessors, and their written opinions* are herewith annexed in original.

* *Opinion of the Principal Sudder Ameen.*—In disposing of this commitment the following questions appear to me to suggest themselves for consideration, namely.

1*st.*—Whether the crimes charged are legally punishable.

2*nd.*—Whether the commission of those crimes by the prisoners at the bar has been proved and

3*rd* —What amount of punishment should, under the circumstances of the case, be awarded by the Sessions Court.

With respect to the first question I observe, that though since the 1st August, 1834, slavery has been by Acts of Parliament, 3 and 4 William 4 Cap. 73, abolished throughout the British dominions, yet as those Acts were specially declared not to extend to the East Indies, Ceylon, or St Helena, and the Indian legislature have done nothing* towards the removal in this country of that restriction, the charge of either purchasing or taking in lease *free born subjects of the state* is clearly one which is not punishable under either the English or Company's law. The Mahomedan law, however, views the two acts differently, for under it, the former or the purchasing is wholly illegal and can be punished at the discretion of the Court (vide decisions of the Sudder Nizamut dated 8th May, 1841 and 17th October, 1853) while the latter or the taking in lease, if unattended with an immoral motive, is perfectly legal and not punishable (vide Macnaghten's Mahomedan Law Chapter IX, Principle 18.) In this case the deeds on which the charges are based are of the latter description and containing, as they do, nothing to indicate an evil intention on the part of the lessee, must be held ostensibly to be legal instruments and to acquit the party engaged in their engrossment, execution and attestation of all blame, *unless* there is other evidence of a trustworthy nature to show that the leases were taken for an immoral purpose and that the Cazee and conveyancer were cognizant of the same, when, of course, the transaction would become an unlawful one and call for the infliction of discretionary punishment (vide Macnaghten's Mahomedan law, Chapter 8, precedent 6, page 321 and decision of the Sudder Nizamut, dated 7th October, 1853, page 643.)

* The Indian laws on this subject are Regulation X. of 1811 and III. of 1832 and Act V. of 1843, but they do not eradicate slavery. They merely prohibit the importation of slaves and the sale of such as may have been removed from one province into another and permit persons in a state of bondage to arrest, if they wish it, their independence.

In the matter of the second question I find prisoner No. 1 guilty on both counts and prisoners Nos. 2 and 3 *not guilty* The grounds on which I have arrived at this conclusion are briefly these. In the first place

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The first point mooted is whether the crimes charged are legally punishable. They are entangled in two general questions of wide importance. The one as arising out of the legality or illegality of slavery under any shape. The other as to the

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prisoner No. 1 admitted, and the witnesses for the prosecution proved, her guilt before the Officiating Magistrate and in the next, the denial by one and all of them in the Sessions Court of their previous statement appears to me to be untrue, and dictated solely by a desire to escape the consequences of her unlawful acts, inasmuch as her vocation (that of a brothel-keeper) tells of itself against the correctness of such denial, while, in the third, there is no evidence whatever either here or before the Officiating Magistrate to establish that prisoners Nos. 2 and 3, were cognizant of prisoner No. 1's motives in taking the leases, which as I have said before, are *per se* perfectly legal instruments.

On the subject of the third question I have only to remark, that as there is nothing to criminate prisoners Nos. 2 and 3, they are entitled to an acquittal, but that prisoner No. 1 is deserving of punishment. The features of the case against her, I observe, are similar to those on which the prisoner Kurkoomaree Peshagur was convicted by the Sudder Nizamut on the 17th October, 1853, and the punishment to be awarded might therefore be made to correspond, id est, that she be imprisoned for three months and fined Rs. 20, commutable on non-payment, to labor suited to her sex. This punishment it must be understood is proposed only with respect to the crime charged in the first count, and has no reference to that forming the second, which in my opinion is not a punishable crime.

Opinion of the Sudder Moonsiff.—Regulation X. of 1811, prohibits the importation of slaves from Foreign countries and their sale in the territories dependant on the presidency of Fort William, and its 3rd Section describes the punishment for persons who may be convicted of importing and selling such slaves.

Regulation III. of 1832, as construed by the Court of Sudder Dewanny Adawlut (vide their Construction No. 955,) does not prohibit the transfer of slaves for money. It merely prohibits their being taken for the purpose of traffic from one territory, British or Foreign, to another dependant on this presidency. Consequently those slaves only are entitled under its provisions to their liberty, who have been made the subject of traffic subsequently to the enactment of Regulation X. of 1811.

Act V. of 1843, (it appears from its preamble) was passed to amend the existing laws regarding the condition of slavery within the territories of the East India Company; and the amendment contemplated by the legislature (as shown by these short sections of the Act) and so far as I can judge, was intended merely to prohibit a Court of the East India Company, civil or criminal, from selling a slave in execution of its order or enforcing any right arising out of an alleged property in the person and services of such a slave. Thus it may be said (as it is to be inferred from the Act) that although Government does not recognize slavery it has not expressly and positively declared its abolition in this or any other law.

In the absence therefore of a definite law from the Government of the country, we can only take the Mahomedan law for our guide and see whether the practice of selling or leasing out into slavery free born subjects, either for good or immoral purposes, is punishable. Macnaghten, on slavery, page 65, para. 1, states "there are only two descriptions of persons recognized as slaves under the Mahomedan law. First infidels made captive during war and secondly, their descendants. These persons are subjects of inheritance and of all kinds of contracts in the same manner as

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sufferance of any kind of slavery, even if legal, in connection with immoral purposes, such as prostitution. Mr. Toogood seems to have adopted the opinion that slavery has been virtually, though not actually, abrogated within the territories of the East India Company, for citing the last Section of Act V. of 1843, he observes "offences against slaves are penal as if done against a free *man*. Thus Government clearly does not recognize slavery within its territories, though it has not expressly declared its abolition," and he concludes with a repeated appeal to the Honorable the Lieutenant-Governor of Bengal "with a

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other property." From this as also from case III. under the head of precedents of slavery, page 318, it would appear that as man is by nature free born, he cannot legally become a slave, that *he cannot be sold but may be leased:* and that such leases do not amount to a *penal* offence, is placed beyond doubt from the circumstance of its ceasing to be good on his attaining majority. It is moreover, clear from the replies to cases II. and VI. pages 312 and 321, that leases for immoral purposes are prohibited by law, and the Court of Nizamut in its decision dated 17th October, 1853, on the opinion of its Law officer, has punished for misdemeanour parties accused of such sales, making Section 19, Regulation IX. of 1807, applicable.

The prisoner No. 1, is charged on the first count with purchasing or taking in lease for the period of 90, 91 and 95 years, girls, being minors, of the age of seven years and upwards and free born subjects of the State for the purpose of making them prostitutes, and in the second count "with registering such deeds in the Cazee's court." The fact of a deed having been executed in June, 1847 and subsequently, when, it is in evidence from the prisoner's own admission before the Magistrate, she was a keeper of brothels, is quite sufficient to convict her of having taken the girls (notwithstanding the alleged pretext of *ijara* produced by her) for purposes of prostitution. I therefore convict her of having taken the girls named in the margin† for the baneful and immoral purposes of prostitution.

† Musst. Chandoo, 1st.
Musst. Chandoo, 2nd.
Musst. Mohree.

The prisoner No. 2, is charged "with being an accomplice in the crime and with aiding and abetting in it by registering the deeds Nos. 402, 661 and 1419, dated respectively 15th June, 1847, 25th July, 1848, and 16th August, 1855." The point to be considered here is, whether the mere act of attestation can criminate the prisoner against whom there is not a direct nor even presumptive proof of his being personally interested, or having taken an active part in the nefarious transaction. He simply attests documents by virtue of his office, which act alone cannot amount in the remotest bearings of the law to criminality, inasmuch as it is obvious that by Circular Order 25th July, 1851, he is regarded merely as a witness to them. Nor can he be supposed to be cognizant of the bad or good intentions of the parties directly concerned.

The charge against prisoner No. 3, is "being an accessary before the fact regarding the document No. 1419 of 16th August, 1855, and aiding and abetting in writing the said document." My remarks on prisoner No. 2, are applicable to this prisoner also, for besides that his acts were not his own, but those of his immediate employer, he is not proved to have had any voice in the document, or to be cognizant of its criminal nature from the simple fact of the writing itself. Under these circumstances, I would acquit both the prisoners Nos. 2 and 3.

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view to the whole subject being enquired into." I feel sure it is only necessary to bring to the notice of the Government, the fact that up to this time, slavery exists to a great or less extent in the country to secure an immediate strengthening of the law and a universal sensation of abhorence of the practice under a Christian Government. Mr. Wright is of opinion that "though slavery has been abolished by Acts of Parliament 3 and 4 William 4th Cap. 73 throughout the British dominions, yet as these Acts were specially declared not to extend to the East Indies, Ceylon, or St. Helena and the Indian Legislature have done nothing towards the removal in this country of that restriction, the charge of either purchasing or taking a lease of free-born subjects of the State is clearly one which is not punishable under either the English or Company's Law." Mr. DaCosta arrives at the same conclusion that, although "Government does not recognize slavery, it has not expressly and positively declared its abolition." There can be no question that slavery has not, in so many words been formally abolished, but the neglect of such form does not of itself legalize slavery. I consider, we altogether lose sight of the plain principles and object of Act V. of 1843, the last and ruling law on the subject, if we thus practically set it aside as one of "non-interference" with slavery. It robbed slavery of its compulsion, and without compulsion slavery should be a non-entity. It did not rudely interfere with the ill conditional habits and practices of long standing, but it practically ruled that not only for the future but extending even into the past, they should receive neither encouragement nor support in "any Civil or Criminal Court." Words of sweeping significance in their legal sense, in point of fact in no degree falling short of actual abrogation by law, more especially, if thereto we add its concluding condition that "offences against slaves are penal as if done against a free man." In the face of such a law there surely could be no greater offence than that of turning any and every one thereby declared free-born into a slave, or bringing any one by a documentary fiction into a state of slavery, through "compulsory labor or services" thereby interdicted This is the mildest view, but when such "compulsory labor or services" are, as in the present trial, extended to and outraged by the vilest purposes in the training up of infants to a life's time of immoral courses, it reaches an enormity. I can only read Act V. of 1843, in its plain words of actual and positive prohibition of slavery, in any and every shape, both past and future. Its manifest object was that the foul cancer should eat itself out. Certainly not, that under its auspices it could possibly renew and gorge itself to repletion. Unsupported by "any Civil or Criminal Court," it ought to have had no vitality. The cautery ought to have been final and conclusive. Any encouragement

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by one or the other became in itself illegal, and Mahomed Natiq as Cazee, registering such deeds, is to such extent a "Civil Court" acting in defiance of such prohibition. Further, if the documents thus registered by him could not, under Act V. of 1843, have been acted on by "any Civil or Criminal Court," what was the use and what was not the extent of mischief in his registering them? The Cazee pleads ignorance of this Act as published in the Agra Gazette of 1843, Page 148, but this I cannot accept. Musst. Amirun may be excused as a female and an illiterate person, but certainly not Mahomed Natiq Cazee, as of a class peculiarly priding themselves as Mahomedan lawyers, succeeding to the post of Cazees, and so often to that of high judicial employ. Mahomed Natiq himself resides with his brother Moulavi Mahomed Rafiq, Principal Sudder Ameen, 1st grade, of Monghyr, whose explanations either to Mr. Toogood or myself regarding his own and brother's conduct in this matter are alike unsatisfactory. Mahomedan laws, and old regulations most consonant to them, are more pertinaciously adhered to than such modern laws as may either happen to over-rule or modify them. This may be the real excuse, but certainly not ignorance.

Para. 11 Mr. Toogood's No. 209.
P. S. Ameen's reply thereto dated 17th April, 1858, copy annexed.
Mahomed Natiq Cazee's defence before Magistrate.

Thus viewed, I regard slavery as illegal, and I now come to the pretence whether deeds of lease of the nature of those under trial, bring such acts within the category of slavery. Anything of the kind seems to me palpably to be such a flimsy mockery that few words should suffice to establish the affirmative. Certainly it is a form of lease, but of what. Beyond the period of ordinary life, it embraces not only the compulsory services of the person so often of tender years, thus engaged or sold; but also the average life time of the unborn progeny as often, and, as is the case, by the documents of the present trial, all equally implicated. To all practical purposes it is as much slavery as any other form of slavery, and that it is popularly regarded in this light is best declared by the fact, that as well before as subsequent to Act V. of 1843, these are the ordinary forms under which slavery has always flourished and still flourishes in these provinces, since it is only under such device, that the Mahomedan law tolerates it. Hence, these documents are as illegal as the slavery they beget. This necessarily differs from Messrs. Wright and DaCosta's opinions, which, resting on the Mahomedan law, at once admit the complications that law delights in, such as cited by Mr. DaCosta "man is by nature free born; he cannot legally become a slave, but he may be leased." Thus the Mahomedan law tolerates the lease of services for life, but only for moral and not immoral purposes, as carefully referred

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to by both gentlemen, and Mr. DaCosta finds that in the absence of a definite law from the Government of the country we can only take the Mahomedan law for our guide. My reply to the foregoing is, that if the view up to this expressed, is the correct one, Act V. of 1843, over-rules every other law whether Mahomedan, Regulation, or precedent, and that none other is recognizable by any Court "Civil or Criminal" throughout the country. It is *ad absurdum* to suppose that if slavery throve and existed under such forms prior to Act V. of 1843, that, that Act is to be stultified by an illegal recognition, active or passive, of their continuance. Here they are, however, as per Calendar, as rampant and degrading in the year 1858, as ever they were before 1843, and it is my plain duty under Act V. of 1843, as it equally is that of "every Civil and Criminal Court" throughout the country, to unmistakeably reject them as illegal, and open to the penalty provided by the concluding Section of that Act.

This brings me to the broader and final question in connection with prostitution as recruited by slavery. Much of it is dependant on what has already been disposed of in the foregoing and as already observed, is even condemned by the Mahomedan law. To this also I may observe, that the precedent cited by Mr. Toogood, Government *versus* Golab Peshagur, published decisions, 8th May, 1841, page 4, is beyond the point, for in this case girls were taken about from district to district for sale as prostitutes. Mr. Lee Warner's opinion, page 6, contains a thorough epitome of the system of slavery in connection with prostitution as then and still existing. The law then wanting, as he first considered, by which to punish those following the custom, who are not knowingly guilty of a criminal offence, though finally reconsidered, and held provided for and punished under the Mahomedan law, is now found in Act V. of 1843, by which I consider myself bound: and though adequate to conviction, yet, as will be seen in the sequel, from the lamentable prevalence of the custom, and the formality, however illegal, which has kept it alive, I hesitate as to the appropriateness of a criminal sentence. The case of Government *versus* Sheikh Shitabdee, &c. published decisions, 17th October, 1853, page 643, is more in point, being that of the simple sale and purchase of a child for purposes of prostitution, which was punished under the Mahomedan law as misdemeanour. There is also the sale of a wife, published decisions, 10th May, 1853, page 630, described as a helpless little girl of nine years of age, in which the previous sanction of the Police is talked of, severely punished under the Mahomedan law, the *futwa* declaring that although the simple sale of a wife was not regarded as an offence, yet the law did not allow of a sale to a prostitute, which was an offence punishable at discretion.

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With these remarks I now revert to the trial in particular. Mr. Wright convicts Musst. Amirun on both counts, remarking; "In the first place, prisoner No. 1, admitted and the witnesses for the prosecution proved her guilt before the Officiating Magistrate, and in the next, the denial by one and all of them in the Sessions Court of their previous statements appears to me to be untrue and dictated solely by a desire to escape the consequences of her unlawful acts, inasmuch as her vocation, that of a brothel-keeper, tells of itself against the correctness of such denial." Mr. DaCosta is also of the same opinion. "The fact of a deed having been executed in June, 1847, and subsequently when it is in evidence from the prisoner's own admission before the Magistrate, she was a keeper of brothels, is quite sufficient to convict her of having taken the girls (notwithstanding the alleged pretext of *ijara* adduced by her) for purposes of prostitution." Referring to the details I have already given of the evidence for the prosecution, I quite agree in this conviction. Both gentlemen are also of one opinion in acquitting the other two prisoners. Mr. Wright is of opinion "there is no evidence whatever either here or before the Officiating Magistrate to establish that prisoners Nos. 2 and 3, were cognizant of prisoner No. 1's motives in taking the leases, which I have said before are '*per se*' perfectly legal instruments." Mr. DaCosta.—"The point to be considered here is whether the mere act of attestation can criminate the prisoner (No. 2,) against whom there is not a direct nor even presumptive proof of his being personally interested, or having taken an active part in the nefarious transaction. He simply attests documents by virtue of his office, which act alone cannot amount in the remotest bearings of the law to criminality, inasmuch as it is obvious that by Circular Order 25th July, 1851, he is regarded merely as a witness to them. Nor can he be supposed to be cognizant of the bad or good intentions of the parties directly concerned." Here, with all deference, I must differ again, but this difference in the first place arises out of the same opposite views as to the ruling law on the subject. Mr. DaCosta's interpretation of the act of registration, whether as regards Cazee's or Register's of Deeds, and the Cazee's plea that the validity or invalidity of documents rested with the Civil Courts and not the registrar's, is of course, the ordinarily accepted one, but that it is open to gross abuse in some instances, this trial itself shamelessly exhibits, and under any view of the ruling law it is unauthorized. The act of registration, whether before Cazee's or Register's of Deeds, carries with it some verification, careful copying, and comparison of the documents registered, and it is impossible to allow the Registrar to be ignorant of contents so amplified. Under Act V. of 1843, no "Civil or Criminal Court" could have accepted such documents, neither *a fortiori* could

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any Cazee or Registrar of Deeds, whilst in the face of such a law any such registry was as useless as it was vicious, when it kept up the undermining of that law. I cannot consent to convict the illiterate procuress introduced by the Police Chowkeedars into the presence of the Cazee, thereby in her ignorance, in the simple form of attendance alone, independent of the documents themselves, not one word of which she herself could have been competent to draw up, stamping the transaction with full legality; and acquit the learned Cazee, thoroughly master of every word in such documents, which he thus sealed with a spurious and dangerous legality, as far as in his power lay. He registered away free-born and their unborn offspring into a degradation worse than slavery. He may have done this under mistaken views and with no criminal intention, but so did also Musst. Amirun. She acted just as openly, and, as far as she could have known, under full legal authority. I find it impossible to convict the one and acquit the other. "*Cœteris paribus*" the oral evidence which has satisfied the assessors in the one case is almost equally good in the other. Musst. Amirun stood before the Chowkeedars and the Cazee of a small town, the acknowledged procuress of the place, and her intentions in a transaction so worded must have been just as patent to all those who put their hands to it, as to herself. The Cazee told the Magistrate "Amirun was a Tuwaief." Again asked, again replied. "He knew she was one," and in a third reply stated he had registered such description of documents not only for "Tuwaiefs" but for "other classes also." Here the distinction is plain and acknowledged as in point of fact it could not have been otherwise. A European Register of Deeds might have been mistaken on a point of this kind, but a Native life resident Cazee never. Besides, according to the documents in the Calendar between the years 1848 and 1857, Amirun had made three appearances of the kind before the Cazee. In the face of this, and my assessors and my own rejection of the tampered evidence before this Court, I cannot of course accept the plea urged by the Cazee for the first time in this Court "that no one opposed the verification at the time of registry, or said the purchase was for Tuwaief." Under the circumstances also, any thing of the kind would have been superfluous. Viewing the case therefore in all its bearings, I convict all the prisoners on the counts charged, but find sentence barred through the difficulty, under all the extraordinary circumstances attending the case, in deciding whether the acts charged were committed with any deliberate criminal intent, as thus further briefly viewed.

It is plain under all the facts of the case, that the transaction, under trial took place openly and to all outward appearances, under a form of law and practice. On receipt of the first

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communication from Mr. Toogood, I commenced an examination of all the Cazee's Registers since 1843, which happened to have been deposited in the record room. The examination is, of course, a hurried and incomplete one, yet sufficiently illustrates the subject. Since 1843, the registries of slavery have been as follows. The mass are probably on account of domestic slaves, but purchases by prostitutes can be here and there distinguished.

Place.	Year.	No. of cases.	Remarks.
Bhaugulpore, ...	1853	2	
Monghyr former Cazee,.........	1843 to 1844	4	
Ditto, Mahomed Natiq Cazee,	1846 to 1855	10	
Purgunnah Furkyah,............	1843 to 1856	48	
Ditto, Soonyagurra, ...	1843	1	An infant girl of two years on a lease of seventy years to a woman.
Ditto Maldah,......................	1845 to 1847	2	
Ditto, Nisunkhpore Karha, ...	1853	1	An infant girl of four years on a lease of seventy years to a prostitute

The practice thus appears to be prevalent throughout this district, and, if the prisoners are liable under it to a criminal punishment, so equally must be many others. In all respects, therefore, I refer the trial for the orders of the Superior Court, holding the prisoners, as has been the case throughout the trial, to attendance on their bail.

A similar summary enquiry of these books for as many years previous to 1843, establishes the very same practice, and the form of lease as the favorite document. I await the final orders of the Court on the present trial before seeking further orders regarding such practice.

Mr. Toogood's proclamation was abrupt and independent, but I would submit that any interference with it just now would, probably, give rise to greater mischief than any likely to arise out of the proclamation itself.

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P. S. Copy of the Monghyr Register of Deed's letter No. 5 of the 13th instant is herewith enclosed. The information called for from the Bhaugulpore Register of deeds has not yet come to hand.

Remarks by the Nizamut Adawlut.—(Present Messrs. B. J. Colvin, A. Sconce, C. B. Trevor, D. I. Money and H. V. Bayley.)

Mr. D. I. Money.—Mr. Toogood does not think that this case can be tried under Act V. of 1843, inasmuch as in his opinion that Act, while it does not recognise slavery, does not abolish it.

He refers, however, to the case of Government *versus* Musst. Golab Peshagur &c., tried by this Court on the 8th May, 1841, in which the prisoners were convicted of illegally detaining and attempting to sell girls for purposes of prostitution, and sentenced to five years' imprisonment with labor. He states that there is only this precedent, and the general Regulations, upon which he can ground the commitment of the prisoners, and at the same time strongly urges, that the offence of which they have been found guilty, should be made a felony by the legislature.

The Sessions Judge is of opinion that the case can be tried under Act V. of 1843, which he regards as an actual and positive prohibition of slavery in any and every shape, the offence committed by the prisoners coming within the definition of slavery and being in contravention of the Act.

He cites, as analogous to the present case, the case of Government *versus* Gourmonee Peshagur and others tried by this Court in appeal on the 10th May, 1853, in which the prisoners were convicted respectively, of selling and purchasing a girl for the purpose of making her a prostitute and sentenced to five years' imprisonment with labor.

Also the case of Government *versus* Sheikh Shetabdee and others, tried by this Court in appeal on the 17th October, 1853, in which the prisoners were convicted as principals and accomplices in the sale and purchase of a girl aged ten years for the purpose of prostitution, the sentence passed by the Sessions Judge being reduced with reference to the particular unaggravated circumstances of the case, and the offence being considered by the Court a misdemeanor under the Mahomedan law.

The Sessions Judge convicts the prisoners of the charges on the different counts in the Calendar, while, at the same time, he expresses a doubt whether they were guilty of any criminal intent.

Upon first looking at the record, it appeared to me, with reference to the Sessions Judge's conviction in regard of the prisoners Nos. 2 and 3, Mahomed Natiq the Cazee and Toolsee-

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ram, we had no case before us, the assessors having acquitted these parties, and the Judge, though convicting them, doubting whether they were guilty of criminal intent. Of course if there was no *criminal* intent they are entitled to their discharge, for they cannot be held to be guilty of a crime which they did not intend to commit. Looking, however, more closely at the whole tenor of the remarks of the Sessions Judge, which in some parts, from a little want of perspicuity, require re-consideration, I would give him credit for being innocent of the inconsistency of such a verdict.

From the explanation offered in the 12th para. of his letter the Sessions Judge intended I think to elucidate the verdict by attaching to it the following meaning, that although he convicted the prisoners of the offences charged, still he did not think from the prevalence of the crime throughout the district, that a punishment could follow; for he states that if under the prevalent practice the prisoners are liable, so equally must be many others. This was no ground for him to take up; and he was clearly *not barred* from passing sentence by any such considerations.

He has followed up this explanation by submitting to the Court a statement showing the number of leases of a similar character, registered in the office of the Register of Deeds at Bhaugulpore, since the promulgation of Act V. of 1843 to the year 1852, the period of servitude ranging from sixty to eighty-eight years, and the age from one and half years to forty years. There appear to have been between those years sixteen females and two males bound over to servitude under such leases. The prevalence of the crime might have been considered by the Sessions Judge in awarding punishment *after* conviction, but was not a point to be taken up in considering whether, under the law, the prisoners could be held to be criminally guilty.

Keeping this explanation of the Sessions Judge in view, and looking at the verdict of the assessors, who differ from him, although I am of opinion that he should himself after conviction have passed sentence upon the prisoners, or have referred the case to this Court, if he thought they deserved a severer punishment than he could inflict, still, I think, as the reference has been made, though not upon those grounds, we have acted rightly and in furtherance of justice in taking up the case for trial, and in proceeding to pass judgment.

There are three points that require our most careful consideration.

1st.—Under what law the offences charged are cognizable?

2nd.—Are the prisoners guilty respectively, of the counts charged in the Calendar? and

3rd.—If guilty, what punishment should be inflicted?

Upon the 1st point I concur with Mr. Toogood in opinion,

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that the case cannot come under Act V. of 1843. This Act amended the law regarding the condition of slavery, and was enacted, in order that slavery should not be recognised in the Civil Courts, and the rights of slavery should not be enforced in any of the Company's Courts, whether Civil or Criminal. It also enacted that offences against slaves should be penal, as if done against a free man.

Nor can it come within the provisions of Regulation X. of 1811, which prohibited the importation of slaves by land or sea from foreign countries, and the sale of them in the Company's territories. Regulation III. of 1832 extended the provisions of Regulation X. of 1811, and prohibited entirely the removal of slaves for purposes of traffic from one part of the British territories to another. At the same time it enacted, that, after the promulgation of Regulation III. of 1832, all persons concerned in the sale or purchase as a slave of any man, woman or child so removed, knowing him or her to have been so removed, shall be liable to imprisonment for six months and a fine not exceeding 200 Rs. commutable to imprisonment for the further period of six months.

Nor can the offence be tried under the provisions of Section 2, Regulation VII. of 1819, which renders liable to punishment by a Magistrate, or in aggravated cases to commitment by him to the Sessions Court, persons guilty of enticing or *causing to be enticed* from their homes unmarried females under the age of maturity, *without the consent of the husband or parent or guardians*, for purposes of prostitution or other unlawful object.

In the present case, there is no charge of this nature. The leases of the children purported to be, whether rightly or wrongly, on the part of the parents, and there is no evidence whatever before us to show that they were enticed from their homes without their consent.

Although the Criminal Regulation Law is chiefly founded upon the Mahomedan Law, and I cannot discover any Regulation under which the offence charged could be said to be strictly cognizable, still I consider that the spirit of the Regulation law is consonant with the spirit of the English law, and the spirit of both is repugnant to any local custom or practice that is contrary to morality and justice and the law of nature.

The precedents, moreover, of this Court, cited both by the Magistrate and the Sessions Judge, have an important bearing upon the question.

In the first that of Government *versus* Musst. Golab Peshagur and others of the 8th May, 1841, the sentence of five years' imprisonment with labor was passed by Mr. D. C. Smyth, who considered the case one of an aggravated nature, and "a severe example necessary to put down such barbarities." Mr. Lee

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Warner, although he concurred with Mr. D. C. Smyth in "the condemnation of the abominable practice of selling girls," was of opinion that in the then existing state of the law, the Court had no power to punish the prisoners, because there was no evidence to prove any act of violence, or their having taken away the girls clandestinely from their friends or relations. He made the following remarks. "If enquiry is made, I believe it will be found, that this supply of girls, for the purpose of prostitution, is obtained by purchasing them when young, from their parents or friends not being able to support them; and that they are brought up and looked upon as the property of the buyer; and that thé profit arising from their prostitution, or from the sale of girls, is as much considered the right of the owner, as it would be if any animal were sold. That this is a most painful and revolting fact, and that it calls for the interference of the law, all will admit; but, until some law is generally made known, I do not think that we can punish those following the custom, who are not knowingly guilty of a criminal offence."

Mr. Rattray, in concurring with Mr. Lee Warner in the acquittal of the prisoners, desired that the proceedings might be laid before the Court at large, with a recommendation that the subject be submitted to Government, with the view of eliciting an enactment suitable to the occasion.

The Law Officer was then called upon to state whether under the Mahomedan law any, and if any, what offence had been proved against the prisoners, and upon his declaring "that *the selling of free-born persons* was prohibited by the Mahomedan law, and as the *attempt* to do so in this case was clearly established, *the prisoners were punishable at the discretion of the Court.*" Mr. Reid concurred in the conviction and sentence proposed by Mr. D. C. Smyth.

The case of Government *versus* Musst. Gourmonee Peshagur and others of the 10th May, 1853, was tried by Mr. C. Steer, the Sessions Judge of Backergunge. The *futwa* of the Law Officer of his Court declared that "the simple sale of a wife was not regarded as an offence; yet *the law did not allow of a sale to a prostitute, which was an offence punishable at discretion.*" The Judge sentenced the prisoners to five years' imprisonment with labor as being "all equally criminally concerned in the sale of a helpless little girl into a slavery of the most infamous and demoralizing kind;" and the sentence in appeal was confirmed by this Court (present: Mr. J. R. Colvin.)

The case of Government *versus* Sheikh Shetabdee and others was tried by Mr. G. P. Leycester, Officiating Sessions Judge of Dacca, who sentenced three of the prisoners respectively to two, four and five years' imprisonment with labor and a fourth to seven years' imprisonment with labor in consideration of his being a police officer.

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The punishment inflicted by Mr. Leycester was reduced by this Court (present: Mr. A. J. M. Mills) upon the following grounds, which are recorded in his judgment.

"The prisoners have appealed, urging that they have com- "mitted no offence. The prisoners are not charged with kidnap- "ping the child, or taking it by force or fraud out of the lawful "custody of its parent or guardian, but merely with the sale and "purchase of it for the purposes of prostitution. This crime is "not specifically provided for by the regulations; but the Maho- "medan law, as declared by the Law Officer of this Court, makes "the sale of a child for immoral purposes a misdemeanor, by "which *tazeer* is incurred; and the Court must therefore treat it "as such. The child was without a protector of any kind, and "the prisoner No. 12, does not appear to have used force or any "illegal means in obtaining the child; his statement indeed, that "it was made over to him by another to sell for that person's "benefit, is not disproved, nor does the case itself disclose any "circumstances of aggravation, which distinguish other cases of "this nature as published in the Nizamut Reports. There is no "doubt that the child was sold and bought for purposes of "prostitution; and the proof is complete against the prisoners; "but the punishment awarded is, with reference to the nature of "the offence, as above stated, excessive. The Magistrate should "have disposed of the case himself, under Section 19 Regulation "IX. of 1807, unless he considered the penalty provided by that "law insufficient for the criminality of the offence. In my judg- "ment it is fully sufficient."

The punishment inflicted upon the prisoners was consequently reduced to six months and three months' imprisonment and a fine of 20 Rs. or in default of payment to labor.

There are cases tried in the Civil Court, which it is not necessary to cite, and which would only show the long continuance of the revolting practice. I would refer only to the following foot note to the case of Musst. Chuttroo, appellant, *versus* Musst. Jussa, respondent, 28th March, 1822, Sudder Dewanny Adawlut, Select Reports, Vol. III page 142.

"The case here alluded to originated in the year 1816, in the "district of Furruckabad. A girl had been purchased when an "infant from her parents by a prostitute, and having been "educated in the courses and for a long time followed the disre- "putable practices of her mistress, she at length attracted the "special notice of Hadee Yar Khan, a most respectable person, "who agreed to marry her in the event of her relinquishing her "unlawful occupation. This she consented to do, and having "left the house of her mistress, proceeded to that of the indivi- "dual above named. The prostitute who had purchased her, and "who of course dreaded considerable loss of profit from her "departure, petitioned the Magistrate of Furruckabad to compel

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"her return, with which request that officer, from a mistaken "notion of duty, complied. An appeal having been preferred "from the above order, the opinions of the *best authorities* in "that quarter were taken as to the validity or otherwise of the "prostitute's claim; and the same question having been pro- "pounded to the *Law Officers of the Sudder Dewaany Adawlut*, "they all unanimously declared that it rested on no legal founda- "tion whatever; that a child purchased in its infancy was at full "liberty when of mature age to act as best suited its inclination; "and that *it was even a duty incumbent on the Magistrate to* "*punish any attempt at compelling adherence to an immoral* "*course of life.* For further information on this subject see "*Principles and Precedents of Mahomedan law*, article slavery."

In the case of Sheikh Khawaj and others, appellants, *versus* Mahomed Sabir, respondent, August 28th, 1830, Sudder Dewanny Adawlut, Select Reports, Vol. V. page 61, the Court was guided by the opinion delivered by its Law Officers in 1809 on reference from the Judge and Magistrate of Bundelkund, the substance of which was that "freedom is the natural state of "man, and legal servitude only arises from infidelity and captivity "in open war with a Moslem conqueror, or from descent from such "infidel captive. Consequently the sale, in a state of destitution, "of a child or of the vendor's own person, establishes no right of "property in, or dominion over, the object of the sale."

In Macnaghten's Mahomedan law, page 321, Case VI. the following question is put: "A prostitute hires the daughter of another woman, as a slave, for the sum of twenty rupees and causes her to follow the same line of life as herself. Is such transaction lawful?" The reply is:—

"According to law, the transaction (as appears on the face "of the deed) is not allowable, because the authority of parents "over their children is restricted to the age of childhood; and "after they attain puberty, the parents have no authority to "dispose of their persons or property; but in the present instance, "it seems that the mother let out to hire her child, while only "six years old, in slavery, for the term of ninety-five years. Now, "after the age of puberty, (the extremest verge of which is "fifteen years according to law) parents have no right of disposal, "as affecting their children. *This hiring therefore for the term* *of ninety-five years cannot, under such circumstances, be admissible.* It has been declared in works of authority, that if a person has been let to hire by his parents during his childhood, he is at liberty, on attaining the age of puberty, either to continue in service or to annul the contract entered into by his parents, by emancipating himself from bondage. *Besides the life of a prostitute is exceedingly reprehensible; and it can never be tolerated, that a person of this description should hire another to make her follow the same pursuits.*"

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The sale of a free man is classed in the Hedaya, see Vol. II. page 29, together with the sale of *carrion* and *blood*, amongst *invalid*, *null* and *abominable* sales.

From the information I have been able to collect, there is, I think, no doubt, that according to the *spirit* of the Mahomedan Law, as laid down in the chief authorities and their respective commentaries and annotations, leases like those before us are equivalent to sales, that the lease or sale of a free man is in its essence contrary to one of the established principles of the Mahomedan law, and that especially all leases for *unlawful purposes* are illegal. I have the authority of Captain Lees, Principal of the Mudrisa College, whom I thought it right to consult, in support of this opinion.

The distinction between the *sale* of a child and of its unborn progeny; and the *lease* of them for 95 years, for the purposes of prostitution might, upon a point at issue in a case, be attempted to be drawn in a Civil Court, if the *legality* of the contract was the point to be tried under the Mahomedan law, the unlawful purpose not being established. In the case of Zuhurun Nissa, appellant, *versus* Khyrut Ali and others, respondents of the 15th March, 1830 Sudder Dewanny Adawlut Select Reports, Vol. V. Page 18, it appears that the *futwa* of the Law Officer of the Provincial Court of Patna declared "that a formal deed assigning the person, labor 'and future offspring for a term of fifty-five lunar years, did 'not legally operate as a *sale*, being in fact a *limited assignment* '*in* the way of *hire*, creating no proprietary dominion. It is "true (the *futwa* proceeds) that *conveyances of slaves are ordi-* "*narily made in this form;* but in law contracts of *sale* and *hire* "are nominally and essentially distinct, and custom cannot prevail "over law."

We are not here, however, sitting upon a criminal trial, to make these nice distinctions. It is sufficient for us, that the leases, or contracts of hire, being of *free* children, and in one case of the unborn progeny of a free child for the most nefarious of all possible purposes, are, if we look only to the Mahomedan law, wholly and essentially unlawful. But, if we regard the crime, as it is, one against morality and justice and against nature, of the deepest dye, although there is no *specific* law to meet the case, still the precedents of this Court, to which I have referred, the opinion of the Mahomedan Law Officer, upon which one of them was decided, and the spirit of the Regulations as consistent with the spirit of the English law, arm us with sufficient authority to pass such sentence as we may think proper upon conviction of the prisoners. Of the guilt of Musst. Amirun, there can be no doubt. Although the evidence before the Sessions Judge appears to have been tampered with, the documents themselves, and the facts of the case with

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her admissions before the Magistrate place her guilt beyond a question. She states before the Magistrate that she did not *purchase* the girls, but only *lease* them. She had in the same way obtained ten other girls, since she kept a brothel; that four children born from them live with her, that she is the owner of them, and that some of the girls were Hindoos, but that she had made them Mussulmans. It is scarcely possible that there should be anything in any recognised system of slavery to surpass in all its hideous features, the offence of which she is guilty. The helpless victims are bound over, and in one case the progeny, if any should be born, for more than the natural term of a man's life, from ninety to ninety-five years, hand and foot, body and soul, to the most debasing servitude and moral degradation, to perpetual pollution and infamy; and the contract is sealed by the chief Mahomedan Law Officer of the district.

It is time that an end should be put to such revolting practices, and that there should not be even the semblance of a law to give them apparent sanction.

I would go further than this Court has yet gone, and convicting the prisoner Musst Amirun of the crime charged, would sentence her to seven years' imprisonment with labor suited to her sex.

Regarding the extent to which the Cazee or the other prisoner are accountable for their share in the transaction, the question is, I admit, a very difficult one to decide.

That the Cazee knew he was registering an unlawful document, and that he knew the children under the registered deed were bound over for life to the slavery of prostitution, I have not the slightest doubt. Musst. Amirun he knew to be the keeper of a brothel. In the leases she is described as a "*towaiff*" طوایف which is the plural of *taifah* طایفه itself, a noun of multitude signifying "a party of dancing girls." The word technically might have been used in the singular to describe her as a dancing girl; but giving it this signification makes little difference, as in India a dancing girl and prostitute are synonimous. But admitting that he had guilty knowledge of the character of the leases, the profession of the lessee, and the future condition of the victims, it would, I think, be straining legal evidence too far to interpret the registration, an official act, into the act of an *accomplice, aiding and abetting* the crime, which is the charge against him.

The Cazee rests his defence chiefly upon the plea, that the documents were *leases*, and that such leases without prohibition have been registered by every Cazee in the district, and also in the office of the Register of deeds. Before the Magistrate he admitted, that he was aware that it was forbidden to *sell* free born persons, but that under these deeds, the children were not *sold* but given *in lease*.

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Under the provisions of Regulation XXXIX. of 1793, Cazees were appointed "for the purpose of preparing and attesting *deeds of transfer and other law-papers*," as well as celebrating marriages, and performing certain religious duties and ceremonies prescribed by Mahomedan law.

They were furnished with copies of the Persian and Bengal translates of all Regulations, printed and published by the Government, see Section 10, Regulation XXXIX. of 1793.

Harrington in his analysis of the Regulations, page 219, Vol. I. upon the office of Cazee, remarks: "The judicial functions, which appertained to the office of Cazee-ul-Cozat or "head Cazee, and in some instances to that of inferior Cazees, "under the Mahomedan Government, have been discontinued, "since the establishment of Courts of justice under the superintendence of British judges; and the general duties of the present Cazees are confined to the preparation and attestation of "deeds of conveyance, and other legal instruments, the celebration of Mussulman marriages, and the performance of the "ceremonies prescribed by the Mahomedan laws as births and "funerals or other rites of a religious nature."

The functions appertaining to the office under the Mahomedan Government which were discontinued, are explained in Hamilton's translation of the Hedaya, Vol. II. book 20 on the duties of the Cazee.

On the 24th July, 1833, the Commissioner of Circuit, 10th division brought to the notice of this Court, a practice prevailing in Tirhoot of registering leases of a similar character to those before us, and requested the opinion of the Court as to the legality of such transactions being registered under Regulation XX. of 1812, or any other law enacted for the guidance of the Register of deeds at the same time, he added, see 6th para. of his reference,—"In my general report to Government, I purpose "commenting on the policy of any longer openly supporting, by "the records and decisions of our Courts, a monstrous system of "slavery, perhaps the only relic of the barbaric operation of Mahomedan law, which has not been either modified or superseded "by our more mild and civilized code."

Upon this referenee, the Court issued on the 16th August, 1833, Construction No. 812, which was published for general information, and in which the Commissioner was instructed that as the deeds of the description alluded to by him were not specified in Regulation XXXVI. of 1793, or Regulation XX. of 1812, the registry of them was illegal under the prohibition contained in Section 7 of the Regulation last quoted.

Looking at these Regulations, the rules prescribed for the guidance of the Cazee, the duties which he was appointed and enjoined to discharge, and the prohibition in the Construction cited to the registration of these iniquitous leases, although

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I acquit him for the reasons which I have stated, of the charge as brought against him in the Calendar, still it is clear throughout all the proceedings on the trial, that he abused the authority reposed in him by the Government, and acted dishonestly and illegally, contrary to the design of his appointment, and the rules laid down for his guidance. He not only knew that these leases were unlawful, and that they were not the legal transfers or conveyances, the registration of which was sanctioned by the law, but he must have known, that he was strictly prohibited from registering them, whatever may have been the prevailing practice elsewhere, there could have been no error or mistake. His defence is therefore a quibble, and the distinction which he draws in exculpation of his conduct between a *sale* and a *lease* is a pretext and a sham. I find him guilty as an officer holding a responsible appointment, of gross and culpable neglect in the discharge of his duties. There is no law, which we could enforce, attaching to the offence of registering such leases, knowing them to be unlawful and prohibited, the penalty of either fine or imprisonment

Under Section 11, Regulation XXXIX. of 1793, Cazees may be sued in the Civil Court, for any *undue practices* in the discharge of the duties prescribed to them by any of the Regulations.

Under these circumstances, as I consider the Cazee to have been guilty of wilful misfeasance in the execution of his office, and as besides the forfeiture of his appointment, we can inflict no other punishment upon him for such culpable dereliction of duty, I would, under Clause 2, Section 4, Regulation VIII. of 1809, direct his immediate removal from his office, as totally unworthy of the confidence of Government and of future employment in its service.

I would acquit Toolseeram prisoner No. 3, of the charge, as laid in the Calendar, viz. of being an accessory before the fact regarding one of the leases, and aiding and abetting the crime in writing it, because I think the charge cannot be legally substantiated by the evidence, and because some of the reasons which I have given for acquitting the Cazee, apply with equal force in favor of his acquittal. He was a mohurrir in the Cazee's office, and would have better ground for pleading, in palliation of his offence, ignorance of the nature of the act, and the responsibility attaching to it, than the master who employed him.

I would only, in conclusion, remark that I think Mr. Toogood the Magistrate deserves great praise for bringing to light and exposing the system which prevails of giving by the official registration of them, the apparent sanction of the law to such nefarious practices.

I believe every town in Bengal, and I fear almost every large

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and populous village too, has its Musst. Amirun, who, if not under registered leases, still under a contract of some kind or other, has permitted and acknowledged *ownership* over female children, and keeps them in *servitude*, if not as *slaves*, for the purposes of prostitution.

Mr. Toogood recommends that a specific law should be passed, making the offence of selling or buying girls for the purpose of prostitution, a felony punishable with seven years' imprisonment.

His recommendation deserves the serious consideration of the legislature. If any such law should be enacted, a provision might be inserted in it, making the offence of registration of sales or leases for such purpose, a misdemeanour punishable with a heavy fine or imprisonment.

Mr. H. V. Bayley.—It would appear from the letters of the Sessions Judge, that he looks upon this case as one to be decided with reference to Act V. of 1843. I do not think that law applies to it, but is one relating to the abrogation of any alleged right of property in slaves, and to the repudiation of slavery. It has no penal provisions bearing upon the case before us; and I shall not therefore refer to the above law hereafter.

The first part of the preamble of Regulation VII. of 1819, seems, to a great extent, to have had in view the correction of the evil results patent on the record of this case. But the portion of it enacting penalties relates to "enticing *and* taking away," which are not charged or shewn here.

Having in view the distinct character of the acts charged against each prisoner, it will be convenient to take their individual cases separately; and in so doing to consider the specific charges against each; how those charges are proved; whether they are penal; and by what laws; and to what extent; and the proper measure of punishment to be awarded to each of those who may be found guilty.

Prisoner No. 1, *Amirun*, is charged with I. "Purchasing or taking in lease for the period of 90, 91 and 95 years, girls, being minors, of the age of seven years and upwards, and free born subjects of the State for the purpose of making them prostitutes. II. With registering the deeds of lease in the Cazee's Court."

The leases, translated into English, and marked A. B. and C. are annexed.

Prisoner No. 1, Amirun admits that she executed and registered them. She is proved to have been then, and since, a brothel-keeper. There is nothing to shew that she made any arrangements, as is customary in all other classes of native society, to provide for the marriage of the girls whom she thus took on hire. Mohree, one of them had a child without

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being married. Chandoo another deposed to the Magistrate that she was being brought up to the calling of a prostitute, but was not old enough to be one. Mohree deposed to the Magistrate that prisoner No. 1, made her a prostitute, that she gave her earnings as such to prisoner No. 1, and was at the disposal of the latter. Prisoner No. 1, herself states to the Magistrate that the girls were to be prostitutes if they pleased, and that she was at liberty to buy them with that view.

It is true that the evidence of Mohree and Chandoo, and the statement of prisoner No. 1, before the Sessions Judge do not repeat the above, but shew prisoner No. 1, to be now a shop-keeper, and the above girls, servant-girls only. But there is no other reasonable conclusion to account for the directly contradictory nature of these statements, than that the witnesses were tampered with, or at any rate perjured themselves, and that prisoner No. 1, altered the admissions she made before the Magistrate. Still even before the Sessions Judge, Chandoo deposes that her mother was a prostitute, that she herself was *born* one, and that *so* she was sold to Amirun. Mohree also states to the Sessions Judge that when she was old enough, she was unchaste.

The witnesses Nos. 1, 2 and 3, (Bhutoo, Ramun and Khemun) depose to the Magistrate that they witnessed the deeds, and that prisoner No. 1, had in view the bringing up the girls to her own calling of prostitution. They retract this before the Sessions Judge, but give no reason for the contradiction in their evidence, and the only reasonable presumption is, that they perjured themselves. I will refer to this hereafter.

The above evidence before the Magistrate, corroborated as I think it is, by all the probabilities of the case, as shewn by the leases in connection with the calling and character of the prisoner No. 1, and the habits in this country of the class to which she belongs, is I think legally sufficient to prove that prisoner No. 1 hired the girls for the purpose of making them prostitutes.

The questions to be next resolved are, whether such act is illegal, and if illegal, also criminal; and by what laws in either case?

I will first regard the bearing of the Mahomedan law on the facts of the case.

The sale and purchase of a free-born subject is illegal by that law. The sale of one's self is of doubtful legality by it; but the letting out to hire of a person *for life* is legal. (V. Macnaghten's principles and precedents Ed. 1825, page 65, para. 1, and page 68, paras. 17 and 18.)

In the cases of the leases marked A. and B. they are *beyond* life, for they include the hire of the girls' progeny, and thus are beyond *legal* hire. The illegality of the sale of progeny, to be

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is declared in the Hedaya. (Vol. I. page 432, Ed. London 1791.)

So far the *legality* having been considered, it remains to see, what the Mahomedan Law deems *criminal* or *penal* in such transfer.

The sale of a free-born person is by Mahomedan law criminal and punishable by *tazeer*. (V. Law Officers' Opinions in Nizamut Adawlut Select Reports Vol. VI. page 7, line 3, May 8th, 1841, and Nizamut Adawlut Reports, 17th October, 1853, Vol. III. Part II. page 644.)

But is there *a sale* in this case? The deeds on which the charges are based, *are leases*. The mere *sale* is illegal and criminal as before shewn. The mere *hire* is *not* illegal, as also before shewn. The hire before us is doubtless tantamount in result, and therefore equal in criminality to a sale; and the Hedaya says: (Vol. II. page 234, Ed as above.) "Hire is rendered invalid by involving an invalid condition in the same manner as a sale, for hire stands in the place of a sale, whence it is that a contract of hire, may be dissolved in the same manner as a sale." But the legal analogy which may be good for arguing against legal *validity*, cannot alone be assumed to be sufficient of itself *to prove criminality;* for penal laws must be construed strictly by their terms, and by the ordinary construction *those terms* legitimately bear.

Then, is the hiring by prisoner No. 1 of the girls for purposes of prostitution *criminal* by Mahomedan law? The case of October 17th, 1853, shews that the Mahomedan law as declared by the Law Officer of this Court, makes the *sale* of a child *for immoral purposes* a misdemeanor, by which *tazeer* is incurred; and the Court must treat it as such.

I have, however, held the leases here are leases; and not a *sale*.

But in p. 322 of Macnaghten's work before cited, there is a *futwa* that the *hiring of a girl by a prostitute to be brought up to her own calling is inadmissible;* and then the words. "Besides the life of a prostitute is *exceedingly reprehensible*, and *it can never be tolerated that a person of this description should hire another to make her follow the same pursuits*." Moreover the note to Sudder Dewanny Adawlut Reports Vol. III. page 142 shews, that under Mahomedan law the Magistrate should punish the attempt of compelling a person to continue to lead an immoral life.

These expositions of the Mahomedan law authorize the opinion that the hiring by the prisoner No. 1 is a misdemeanor. Both these expositions and the opinion cited in the case of October 17th, 1853, shew that the Mahomedan law looks to the *immoral purposes* of the transfer.

Indeed the transfer *by hire*, such as is before us, being *for life*,

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effects the *immoral purpose* in which the Mahomedan law lays the gravamen of the misdemeanor, although as to the legality of the different species of transfer, it makes a clear distinction.

I had doubts whether the person who *bought* and the person who *took* on hire were both wrong doers by Mahomedan law, or only those who *sold* or *gave* on hire; but the expositions I have above cited have resolved my doubts, and that law, by those expositions, includes the case of those who *take* on hire.

I further think the act of which prisoner No. 1, is guilty comes within the misdemeanors which can be punished under the Regulations. The policy of the Regulation law is clearly indicated in the first part of the preamble and in Section 2, of Regulation VII. of 1819. There the evil, the correction of which is aimed at, is the bringing up girls and others for prostitution. The "taking and enticing" is only provided against as one kind of means to that end. And under the Regulations, *all* concerned in the misdemeanor would be liable to punishment, although of course, the measure of it would be awarded with reference to the relative degree of guilt, proved against each individual in each case.

I therefore convict prisoner No. 1, both under the Mahomedan law, and under the Regulation law, on the 1st count, i. e. of taking on lease girls for the purpose of making them prostitutes. She is also guilty of the 2nd count: i. e. registering such leases; but that is a subordinate act and one done in completion of that charged in the first count; and requires no further remark.

As to the measure of punishment to be awarded to prisoner No. 1, Amirun, I would first remark that persons guilty of misdemeanors under the Mahomedan law and Regulations, are, under Section 19, Regulation IX. of 1807, liable to be punished either by the Magistrate, or, if he considers the punishment he can inflict too little, he can commit the case to the Sessions Judge. This case has been thus committed, and has been referred to us, as the judge and assessors have differred. On the one hand, we have to look at the general prevalence of the offence, as shewn on the record, and the repeated acts of the same kind done by prisoner No. 1, i. e. in fully ten instances; on the other hand, the same record shews such acts have been practically little interfered with by penalties consistently enforced against them. On the whole, I think the claims of justice will be met in this case by a sentence of two (2) years' imprisonment with labor suited to the sex of the prisoner. The labor commutable on a payment of a fine of 50 Rs. The precedent of the 17th October, 1853, supports this smaller measure of punishment.

Prisoner No. 2, Kazee Mahomed Natiq.—He is charged with being an accomplice and aiding and abetting in the crime

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charged in the 1st count. He admits having registered the deeds A. B. C. and many similar deeds; but pleads that other Cazees and the Registers of deeds have done the same, but he says that he was ignorant of any criminality in so doing. The record and the statements in the letters of the Sessions Judge and their enclosures substantiate the first part of this plea. There is, however, no doubt that this prisoner knew prisoner No. 1, to be a brothel-keeper; and that the girls would be brought up to prostitution. He cannot, however, be found guilty of aiding and abetting a specific offence when he acted only as a ministerial officer, and in no way in an individual capacity. He is not shewn to have been in that capacity present, aiding and abetting on any occasion of these transfers of girls to Amirun, prisoner No. 1, nor to have known or to have been concerned, (otherwise than by registering these deeds) with the parties to the transactions, or with the transactions themselves. I would therefore acquit this prisoner and direct his immediate release. He should not have been committed.

Prisoner No. 3, *Toolseeram*, is charged as an accessary before the fact and as aiding and abetting. He copied fair, one of the deeds from the draft brought by Amirun to the Cazee's office, he, being an assistant writer (apparently) there, and to have no connexion otherwise with the parties or their transactions, I would therefore acquit this prisoner, and direct his immediate release. He should still less have been committed.

I think the witnesses Nos. 1, 2 and 3, should be committed for perjury. They made contradictory statements before the Magistrate and Sessions Judge on a point material to the issue of the case, and this by the Regulations, is perjury. That material point was, whether the girls were hired to be brought up to prostitution. To the Magistrate they deposed they were, and that prisoner No. 1 was a brothel-keeper and hired them for the purpose. To the Sessions Judge they said the reverse, and that prisoner No. 1 was a shop-keeper; and the girls were her servants only. There was perjury also in their evidence on the 2nd count against prisoner No. 1, and in that against prisoner No. 2, as to the particulars of the registry of the deeds, and the Cazee's cognizance of the object of prisoner No. 1 in the hiring the girls.

The matters mooted in paras. 12, 13 and 14 of the letter of the Sessions Judge are for the consideration of Government. The Sessions Judge should act accordingly.

The 11th para. of the letter of the Sessions Judge contains an opinion apparently inconsistent and illegal. He there states that he convicts of a criminal offence, but finds no criminal intent.

The attention of the Sessions Judge is called to the vagueness of his letter of reference. Letters of reference should succinctly

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but clearly and consecutively contain the charge, the evidence by which it is supported, the facts found on that evidence, the criminality established thereby, the law by which penalties are provided, and the extent of the penalty deemed proper for each prisoner under the circumstances of *his* case, with the reasons of the Sessions Judge for his opinion on that point.

Mr. B. J. Colvin.—This case has been referred to me in consequence of a difference of opinion between Messrs. Money and Bayley as to the term of imprisonment to which Musst. Amirun should be sentenced, but I hold that the proceedings of commitment and trial are void *ab initio* and that they should therefore be quashed. There was no complainant before the Magistrate, who proceeded "*motu suo*," and conducted the prosecution on the part of Government alone. In a case like this, it was not enough to justify the proceedings that Government should be prosecutor. Government is only put in that position to allow the complainant to give evidence as a witness, but here there was no complainant, or for the ends of justice in *serious* offences the ruling power may punish, though the injured party waive his private claim (Nizamut Reports, Vol. I page 367,) but the crime charged is not an offence to which this doctrine applies. It cannot be reckoned a heinous crime in which a Magistrate can act of his own accord by the last sentence of Section 4, Regulation IX. of 1807; for it is not an offence declared by law; and the question is, whether it is one by Mahomedan law; and clearly a Magistrate cannot act at all without a formal complaint in such case. The cases coming under Section 4, are those enumerated in Clause 1, Section 3 of the above Regulation, and even then, it is evident from the terms of the Regulation that a complainant as regards them is to be the rule and not the exception, and this is apparent also from Regulation IX. 1793, and III. of 1812. On reference to the precedents cited in the judgments of Messrs. Money and Bayley, I see that in those of 1853 there was a prosecutor, the party aggrieved, with Government. Government being only associated as prosecutor *pro formâ* under the instructions contained in Circular Order No. 85, dated 31st May, 1852, to enable the Government advocate to appear if necessary in the Nizamut Adawlut, while in the case of Golab Peshagur (May 8th, 1841,) the charge was forcible confinement and removing the girls from place to place, and their statements were taken as evidence. In that case, Government prosecuted to have the benefit of their evidence as to the commission of the outrage upon them, but in this case, as is apparent from their depositions, the girls leased to the prisoner sought for no redress and preferred no charge. I hold the proceedings of the Magistrate to have been entirely without warrant of law. I would therefore quash the proceedings of commitment and trial, and direct the discharge of Amirun.

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The case must go before another Judge.

Mr. A. Sconce.—In disposing of this reference, I have to confine myself to the charge preferred against Musst. Amirun. That charge is as follows: purchasing or taking on lease for the periods of 90, 91 and 95 years, girls, being minors, of the age of seven years and upwards, and free-born subjects of the State, for the purpose of making them prostitutes.

This charge is founded on three contracts mutually executed between the parents of the children, on the one hand, and Musst. Amirun, on the other.

By the deed, dated 16th August, 1855, Fukeerbuksh hires for the period of ninety years, to Amirun, his daughter Chandoo of seven years of age, for the sum of Rs. 12-8. This child therefore would appear to be now about ten years old.

By the deed of 25th July, 1848, Musst. Teree hires, for the period of ninety-one years, to Amirun, her daughter Chandoo of four years, for the sum of Rs. 7-12. This girl should be now about fourteen.

By the deed of 15th June, 1847, Musst. Tutree hires, for the period of ninety-five years, to Amirun, her daughter Mohree of seven years, for the sum of Rs. 20. This girl should be now eighteen years old: but in her deposition she gave her age as twenty-five.

If we follow these deeds, therefore, it is inexact to state, as is stated in the charge, that at the date of the contracts, the girls were of seven years and upwards. One would appear to have been only four years and the two others about seven years. In all the cases, a considerable time has elapsed since the contract was entered into, or what is called the crime was committed; in one case, about three years; in the second, about ten years; and in the third, about eleven years.

I apprehend that the duration of the contracts does not enter into the essence of the offence. There is, obviously, no distinction, in this sense, between a contract for ninety and a contract for ninety-five years: and so, I suppose, the contracts might have been for fifty, twenty or ten years without varying the nature of the crime with which the Magistrate has charged the prisoner. The crime, no doubt consists in hiring the children for the purpose of prostituting their persons, and must be understood to embrace a period no longer than is necessary for the consummation of that purpose.

In the charge, the term "taking on lease" or, as I prefer to say, hiring, is made to alternate with the term "purchasing." The Magistrate means, probably that the contract may be considered equivalent to a purchase, and the language used is comparatively unimportant, so long as the exact nature of the offence be distinctly intelligible

To hire a child is not necessarily a crime. To receive into

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one's house and to engage to keep a child for a longer or a shorter time does not in itself import an injury. In this case, we have no question of personal violence or personal restraint. The prisoner is not said to retain the children against their will or against the will of those who should assert towards them the rights of natural protectors. The charge is wholly free from violence. So far as these proceedings go, the children were freely assigned by their parents to Amirun; by her, to this day, they have been maintained, and with her they prefer to stay. Indeed the girl Mohree professes to be her own mistress and independent of the protection of the Court. In her deposition before the Sessions Judge, she said, when she grew up, she cohabited with a man and bore him a child and still lived with him.

For these reasons, it seems to me that whatever may be said of other acts done, or purposes entertained by Amirun, *the fact that she hired the children cannot be charged against her as a crime.* No personal violence has been exhibited, and no restraint of their personal liberty. And I would add that if the circumstance of duration, which I have already eliminated, were restored by way of aggravation, the hiring would still be no crime. The 90 years' contract is, as regards the child contracted for, in itself nothing. By that contract, no personal restraint would be justified and, by it, towards the child no more criminal violence can be supposed to have been exercised, than if she had been bound by the threads of a spider's web. The contracts as against the girls, no Magistrate could enforce. But, on the other hand, while the subjects of these contracts are not personally aggrieved; while they do not feel shackled by the contracts which Amirun holds, or the control which she exercises, it seems to me that we cannot treat the reception of the children by Amirun, and the utterly chimerical assertion of her right as a mistress for near a century, as a crime.

In this view of the acts of Amirun, it is immaterial whether we describe the acquisition of the children as accomplished by hire or by purchase. A contract of sale must remain always unenforced and unenforcable: and, necessarily, any act of violence or restraint done under the assumed right of that illegal contract, would properly fall within the cognizance of the Magistrate. Upon this point, there is not, there cannot be, any general misapprehension of a Magistrate's duty. I do not speak now of the control exercisable by the natural or lawful protectors or guardians of minors; and, such cases apart, when acts of violence or undue restraint are complained of, Magistrates, I doubt not, are always prepared, as they are bound, to give redress.

Before the promulgation of Act V. of 1843 slavery was legally prevalent. Since this Act, however, the fetters of slavery are

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snapped, and men and women are bound only by the engagements of their own will.

I come now to what I take to be the gravamen of the charge, the hiring or reception and keeping of three young children so as to rear them to lewdness and prostitution. Here, as everywhere, the destiny is miserable. The unhappy fact is not to be softened and is to be deplored. But I have now to deal with it as a criminal charge. The difficulties in the way of a conviction seem to me insuperable. It is to my mind no authority to know that, according to the Mahomedan law, the sale of a child for immoral purposes is a misdemeanour. Another text may be found to distinguish between the sale of a free-born man and a slave, invalidating the one and legalizing the other. But I am not disposed, for the attainment of a casual purpose, to make use of the convenience which the Mahomedan law, practically obsolete, might, in general language, be found to furnish. If I am to convict and punish, I should wish the crime to be authoritatively and precisely defined. What then, is the crime, and under what conditions is it to form the subject of a prosecution? Does the crime consist of the mere taking of a child by a woman, who, at the time of taking, can be proved to be a prostitute? Or, besides the taking, does it extend also to the nurture of the child? Does the crime embrace actual prostitution; or, is it complete, if prostitution be avoided? Is the age of the girl taken material, the same law applying to a child of 7 as to a child of 14? How is the crime affected by the woman, who originally received the child, changing her habits of life? Would the original reception of the child be still punishable, if she afterwards proposed to give her in marriage?

Again, it is equally important to consider the circumstances under which the Magistrate's power to take notice of the offence shall arise. In the present case one of the subjects of the wrong done comes before the Sessions Judge with a child in her arms. She takes no offence. She wishes to be let alone. It is eleven years since her mother abandoned her to the prisoner; and it seems to me to be impossible after this interval to fix a crime upon Amirun. If we do not stop at ten, we may not stop at twenty years. Here we have no question of condoning an offence, because for years the offender has successfully evaded the pursuit of justice; but, rather, in this case, for ten years, there has been no charge; and seeing the relaxed morality and undefined law which have hitherto guided us, I think it would be unjust to sustain this commitment.

Again, speaking not of what ought to be, but of what the law is, I am sure that Magistrates of districts are not competent, as visitors of houses of ill-fame, to enquire into the past lives and present positions of the inmates. Such is the function

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which in this case the committing Magistrate has exercised; but, as the law stands, it seems to me that the Magistrate is not competent to originate a prosecution of this kind: and if this conviction be affirmed, the duty would appear to devolve on Magistrates in every bazar and town of their districts, to set on foot investigations into crimes which ten years after the event it is thought expedient to denounce. I observe that Mr. Toogood reports in one of his letters that he has "released three other women of 20, 25, and 35 years of age from the bondage" of Amirun. He does not say that these women had complained to him of any restraint being put upon them; and he would have acted more discreetly, I think, by abstaining from the show of authority, which possibly was not likely to be appreciated.

For these reasons, I think the prisoner Amirun should be acquitted. The offence is indefinite. The prosecution is a surprise. The Magistrate's interference is without authority.

I have said nothing of the remarkably defective evidence recorded at the trial. I observe only that the Sessions Judge's conviction is pronounced almost wholly, not on evidence delivered before himself, but on statements made before the Magistrate.

The Sessions Judge convicts but pronounces no sentence. He appears to have transmitted the proceedings to this Court in order that the prisoner, though legally convicted, might be pardoned. The Judge, I apprehend, was bound to declare the sentence which this conviction entailed: but, under the circumstances of this case, I do not propose to return the proceedings for that purpose.

Mr. C. B. Trevor.—This case has been referred to me as fifth Judge and the questions which I have to determine concern the prisoner Amirun alone, the other two prisoners charged in the calendar have been acquitted.

The questions to be determined by me are, 1st, is the offence with which Amirun is charged a criminal offence known to our system of criminal jurisprudence or not? 2nd, if it be, was the Magistrate warranted in inquiring into the matter on his own mere motion, or was it necessary, under the law of procedure current in these provinces, that he should be first moved by a formal complaint in writing? and 3rd, if the offence with which the prisoner is charged be a criminal offence under the law, and if the Magistrate were authorized in taking up the case himself without a complaint in writing, is the offence charged proved against the prisoner?

The third point might be enquired into first, and the two law points left for determination only, in case the evidence should be found sufficient to support the charge against the prisoner. As, however, by this course, in case the evidence

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were insufficient, the points of law would receive no consideration, and as it seems advisable after four of my colleagues have given opinions, that I should also state mine upon them, I proceed to consider the questions in the order in which they stand above.

The offence charged against the prisoner Amirun is the purchasing *or* taking in lease, for the period of 90 or 91 or 95 years, girls, being minors of the age of 7 years and upwards, and free-born subjects of the State, for the purpose of making them prostitutes.

The charge as laid is founded upon three deeds, dated severally the 15th June, 1847, the 25th July, 1848, and 16th August, 1855; and, for the purpose of determining whether the charge is really for purchasing, or taking on lease, for the purposes of prostitution, (for both offences are erroneously coupled together by the word "or" used in an interpretative sense) it will be necessary to turn to the deeds themselves.

The three deeds are evidently drawn up according to one and the same mould. They recite in each instance on the part of the letter or lessor that he or she, the father or mother, being pressed by poverty had, for the consideration of a few rupees, leased his or her daughter, minors, to Musst. Amirun the prisoner, for the period of from 90 to 95 years, for performance of whatever business of the said lessee might arise; and that, having received the consideration money, each surrendered his or her daughter to the lessee according to the terms of the instruments; and the lessee or hirer, on her part, contracts that she will supply the girls with the necessary food and raiment, and employ them in any necessary business that may arise.

Now, there is no question that, under Mahomedan law, a parent can let out for hire an infant; and it is equally unquestionable, that when the infant attains the age of puberty, she can either affirm or annul such contract entered into by her parents;* but the point which I have now to determine is, whether the contracts entered into between the prisoner and the fathers and mothers of the three girls, is a contract of hire at all under Mahomedan law.

In order that a contract of hire should be valid under that law, it is necessary that the usufruct and the hire, in other words that the subject contracted for and the recompense fixed for the same, should be particularly known and specified.† In the present cases, the general services of the minors are the subject contracted for, and their food and clothing are the recompense to be paid by the hirers. So far, judging from the face

* Macnaghten's Mahomeden law, page 321.

† Hedaya, Vol. III. page 313.

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of the deeds alone, there would seem to be nothing objectionable or invalid, in the contract. There is, however, a further recital that the fathers and mothers of the several girls, in consideration of a small sum of money, had each surrendered his or her daughter to the hirer for a term beyond that of the duration of human life.

Now, though these words, as used, are applicable to a contract of hire, I am of opinion that beneath these words there lie all the essentials of a sale. There is the transfer, once for all, nominally, of the service of, but in reality of property in the children, for the term of their natural lives or a total surrender on one side, of all right in them in exchange for the sum of money paid by the other.

As then, these deeds on which the present charges are based, though partly bearing the form of leases, are really and essentially contracts of sale, the charge against the prisoner will stand for purchasing the girls, being minors, with a view to making them prostitutes; and the question is, whether that offence is criminal under Mahomedan law or not.

Objection has been taken to the application of Mahomedan law to the present case, inasmuch as it is obsolete; but I apprehend, that however much we might wish that it were so, it is still current, and that that law, as modified by the Regulations, is the law by which the Criminal Courts in the Regulation provinces are at the present day, governed. At the same time, I should have great reluctance, were it necessary for the present case so to do, in exhuming a new crime from the *Hedaya*, or other works of Mahomedan criminal law, and in applying it for the first time to the circumstances of this case. Such a course, however, of procedure is not in the present occasion, necessary. The crime of purchasing children for the purpose of prostitution, has been recognised by this Court as a misdemeanor under Mahomedan law on two different occasions so lately as 1853.* I have no difficulty therefore in following those precedents, and declaring that the crime, as charged, against the prisoner, is a criminal offence under our system of criminal jurisprudence.

It is to be remarked that the gravamen of the charge as laid, consists in the immoral purpose for which the act of purchase was made. In order, therefore, to bring the crime home to the prisoner, the act of purchase, and the evil intent with which it was made, must both be proved; and if the act and the intent be fully proved to have concurred in time, the crime will be established, and this, it appears to me, without any indefiniteness or other difficulty.

* See Sudder Nizamut Reports for 1853, pages 630 and 643.

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Though the offence, with which the prisoner is charged, is a misdemeanor under the law, I am of opinion that it was not competent to the Magistrate of his own mere motion to originate this enquiry; but that a formal complaint in writing was necessary, before he could move in such a matter. The words of Section 6, Regulation IX. of 1807, are clear upon the point; and require that a formal complaint in writing, should be preferred to the Magistrate, as to all bailable crimes and misdemeanors. Whatever difficulties may arise in some instances none can arise in the case before me. The offence is simply a misdemeanor, and it is a bailable offence; and consequently, under the express words of the law above cited, requires a written complaint to be preferred, ere the Magistrate can take cognizance of it.

But it may be said that though the law of procedure in question requires a formal complaint in writing in certain cases, still the present offence charged against the prisoner is one against public morals, and is included within the provisions of Act II. of 1856; and if so, the Magistrate could, on his own personal knowledge, proceed against the prisoner for the offence with which she stands charged.

The law in question was passed with a view of enabling Magistrates and certain other officers to take cognizance of all offences which affect the public, without requiring a complaint in writing and the attendance of a complainant. By its first Section, it is enacted that "so much of Section 5, Regulation IX. of 1793, of Section 5, Regulation VI. of 1803, of Section 6, Regulation IX. of 1807, of the Bengal Code, as require a complaint in writing to be preferred to a Magistrate or the attendance of a complainant shall not apply to any offence which affects the public," and Section 2 enacts, "that a Magistrate or other officer having jurisdiction over such offences may, on the information of a Police officer, or other person, to be given on oath or affirmation, or on his own personal knowledge (having first recorded the ground thereof in his own hand-writing) proceed against any person for such offence in the same manner, as if a complaint in writing had been preferred and duly deposed to."

What, then, are the offences which affect the public? Offences may be divided into three classes; those which affect the individual and him alone. Amongst these can come all petty offences, such as abusive language, calumny, inconsiderable assault and affray. Those which injure both the public and individuals, such as, larceny, burglary, arson, and, in short, all malicious offences against person and property; and thirdly, those which are purely public in their character, such as acts endangering the public health, public morals and decency, public peace, and public justice. These become, by their very

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September 2.

Case of MUSST. AMIRUN and two others.

existence, criminal, and it is immaterial whether in fact they have produced injury to any individual or not.

It is to this class, it would seem, from its terms to which the law of 1856 above cited, refers; and looking beyond its terms to the intention of the legislature, it would seem from the correspondence which took place previous to the enactment of the law, that it was intended to dispense with the necessity of a private prosecution in offences against public morality and decency, and generally against the public weal. Such being the case, this question then remains, does the offence charged, come within the category of offences, which affect the public, as that term is used by the legislature?

On analysing the crime, it is clear that it is one mainly against the purity of the infants sold and purchased; and, as between the parties to the transfer, is a conspiracy for the defilement of an infant female. But whatever name be given it, it is essentially an offence against the person. This may be allowed, and it be said that, although an offence against the person, and therefore, in the first instance, a private wrong, yet the intent charged, is so directly injurious to the public at large, that the State, for the protection of the individual, should notice and punish it, as though it were committed against the public.

There is no doubt that prostitution is a great moral evil. At the same time it must be remembered that law and morality are not co-extensive; but that there are duties clear and well defined in the last which, from their nature, are not taken into account by the former. Up to what point the law should enforce moral duties, will be determined differently by different communities; though the more civilized a country is, the more exactly and fully its laws will represent and give effect to the moral sentiments of the community. But this much seems clear, that in order to bring an offence under the designation of one affecting the public morals under the system of criminal law existing in this country it must be one tending, irrespective of any injury to any individual, *by its directness and openness,* to impair the public morals; and also that many acts of highly immoral nature, if done in a private manner, are not punishable criminally as offences against the public.

Now applying this test to the offence charged, there is no ground for saying that either by its directness or openness the public morals have been affected. If so, it is impossible to look upon it as an offence against the public, as those terms are used in Act II. of 1856.

For the reasons then given above, I am of opinion that the offence with which the prisoner Amirun is charged, is a misdemeanor under Mahomedan law; that it is an offence only against the persons of the minors, and not one affecting the

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public morality; and that, consequently, under the law of procedure, Section 6, Regulation IX. of 1807, a written complaint to the Magistrate was necessary to give him jurisdiction over it. As, however, the Magistrate has acted without that necessary condition precedent to action on his part, his proceedings have been entirely without warrant of law, and the prisoner Amirun is at once, without entering upon the third point laid down for my determination, viz. whether the offence is proved against her, entitled to her immediate release.

PRESENT:

A. SCONCE, Esq., *Judge*, and G. LOCH, Esq., *Officiating Judge.*

Purneah.

1858. September 10. Case of Syud Tussudduck Hossein.

Evidence of the prosecutor and five witnesses of immature age rejected, as they had given that evidence without having taken the simple affirmation prescribed by Section 15, Act II. 1855. The attention of the Sessions Judge called to the provisions of Section 15 of the above law; and the manner in which the evidence of witnesses of immature age should be recorded, pointed out.

GOVERNMENT and another

versus

SYUD TUSSUDDUCK HOSSEIN.

Crime Charged.—1st count, wounding with intent to murder Musst. Hafizun; 2nd count, attempting to commit suicide.

Committing Officer.—Mr. H. Balfour, Officiating Magistrate of Purneah.

Tried before Mr. W. H. Brodhurst, Officiating Sessions Judge of Purneah, on the 17th July, 1858.

Remarks by the Sessions Judge.—The facts of the case as given in the evidence are as follows.

The prisoner was employed as a teacher in the house of the prosecutor, Shahamutoollah, where he used to teach a few other children besides the prosecutor's own family. He had been so engaged about six months, when on a Sunday morning in Falgoon last, three or four hours after sunrise, the prisoner called the prosecutor's little girl Hafizun to him, and asked what she had done with a phial that belonged to him. The child who was in the yard at the time the prisoner called her, went to the Mucktubkhanah in which were the prisoner and the other children, and informed the prisoner that she knew nothing about the phial, upon which the prisoner seized her by the hands and feet, threw her upon a *charpoy* in the room, and with his knife, which he took from under his pillow, cut her throat. She managed to escape from him and ran out into the yard where she fell faint with loss of blood.

Prosecutrix Hafizan.
Wit. No. 1, Chehtun,
" " 2, Mooradbuksh.
" " 3, Insrep.
" " 4, Abdoolrohim.
" " 5, Abdoolkureem.

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The prisoner immediately attempted his own life with the same knife, and the children all screamed out. Their cries attracted the attention of the prosecutor, and the witnesses, as per margin, who were at the door of the house, in conversation, and they all went at once inside the premises. There they found the little girl as above described, the prisoner stretched on his *charpoy* with his throat just cut, and the knife in his hand, and the other children said that the prisoner had killed Hafizun and himself also.

No. 9, Uthoo.
" 12, Hunwan.
" 13, Danoollah.
" 14, Alumoollah.

The witnesses as per margin attested the *sooruthall.*

No. 6, Janallee.
" 7, Kadir.
" 9, Uthoo.

The wounded parties were sent in to the station for medical treatment. The Civil Assistant Surgeon describes the wound of the girl as one of four inches in length, one inch in breadth and half an inch deep. Only the skin and superficial muscles of the throat had been divided. The wound, although of a serious nature, was not likely to result in death. And the wound of the prisoner which was also on the throat, he states was of a more serious nature, the instrument by which the wound had been inflicted having divided the wind-pipe. This wound was about four inches in length, one inch and half in width, and in depth also one inch and a half.

Wit. No. 8, Dr. F. J. Earle.

The knife was six inches long and weighed three *tolas.*

The witnesses Nos. 7, 10 and 11, were called to prove the prisoner's mofussil confession, but failed to do so satisfactorily.

No. 7, Kadir.
" 10, Chekoo.
" 11, Hubbee.

The prisoner pleaded *not guilty* to both charges.

Before this Court he ignored his mofussil and foujdary statements, saying he could not be responsible for any thing he had previously written, as his mind was in a disordered state from the wound he had been suffering from. He then stated that whilst lying asleep on his *charpoy* on the morning in question, some unknown persons had attempted to take his life by cutting his throat, that he saw two men running away, but as their backs were towards him, he could not recognize them, and he could not say who had wounded the child. He asserted that there was a general ill-feeling towards him, in the village, on account of a supposed improper intimacy between him and the girl, and he insinuated that for this cause, the family and neighbours might have desired to get rid of both of them. He said he was fond of the girl and she liked reading with him, and that when in consequence of her marriage being talked about, her parents thought it proper she should no longer read

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with him and the other children, and they shut her up in the house, she used occasionally to make her escape and come to him to read. This account differs from both his mofussil and foujdary statements. In the former he admits having cut the girl's throat, because she first cut his. In the latter written by the prisoner himself in presence of the Assistant Magistrate, he says the girl first attempted to cut his throat, and that he ran after her to catch her, that on coming up with her, he gave her a knock, and that as she had the knife in her hand she may possibly have cut her own throat with it.

The *futwa* of the Law Officer with whom the case was tried, acquits the prisoner of both charges, the reasons being, that as all the eye-witnesses were under age, and the confession of the prisoner was not proved, there is no legal evidence against him, and for want of proof he ought to be discharged.

I am unable to concur with the Law Officer. The eye-witnesses and the prosecutrix, it is true, were all children under eight or nine years of age, and the mofussil confession of the prisoner was certainly not satisfactorily proved. But those circumstances do not appear to me sufficient to warrant the acquittal of the prisoner. The confession may be set aside as doubtful. But I see no reason why the statements of the girl Hafizun and the other five children, the witnesses Nos. 1, 2, 3, 4 and 5, should not be believed. They are perfectly consistent, and the children appeared to be telling the truth. Had they been tutored to give a false account of the affair, some of them would in all probability have broken down in endeavoring to tell the story. Besides their accounts are very strongly corroborated by the testimony of the witnesses Nos 9, 12, 13 and 14, and of the girl's father Shahmutoollah the prosecutor. The children all say they were present and saw both deeds committed by the prisoner, and the other witnesses who were on the spot, immediately after the commission of the crimes, confirm the children's statements. Hafizun, a girl of eight or nine years of age, was found on the floor of the yard, with her throat cut and bleeding. She informed the witnesses the prisoner had just wounded her. The other children did the same, and the prisoner was found stretched on a *charpoy* in the room where the children had been reading with his own throat cut, and his knife in his hand. He appears to have fallen back on the *charpoy* just as the witnesses reached the room. His hand relaxed its hold of the knife and the latter fell under the *charpoy*, whilst the witnesses were looking on at the scene. The Law Officer appears to take no account of the circumstantial evidence. To my mind, the evidence is very conclusive against the prisoner.

No. 9, Uthoo.
,, 12, Hunwan.
,, 13, Danoollah.
,, 14, Alleemoollah.

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His defence is worthless and his story improbable. It remains to consider the intent, the motive, and state of mind of the prisoner at the time.

The intent is clearly shown by the position of the wound. It could have been inflicted for no other purpose than to destroy life. It was not likely to cause death according to the medical testimony, but that fact does not affect the original intention of the individual who inflicted the wound. That the girl was not killed, was probably accidental, and owing to the prisoner's indecision, or repentance, whilst committing the crime. This opinion is supported by the prisoner's immediately attempting suicide.

The motive for committing the crime is not quite so clear. The one assigned by the children appears at first insufficient, but as the prisoner would seem to have given way to temper for some days previous to the occurrence, it is not impossible but that he may have worked himself into a fit of passion on that day also, however trifling the cause may have been. And this, I consider was really the case. The only other motive that seems to present itself, is, that the prisoner may have been disappointed in not obtaining the girl in marriage, and determined to destroy both her and himself, and that the story of the phial, told correctly by the children, was the means used by the prisoner to bring the girl within his power. This idea, however, is not supported at all by evidence.

Next, as to the prisoner's state of mind at the time. The adult witnesses all state there was no reason to believe him of unsound mind, that his temper had been unaccountably violent and passionate for some few days before, but there was nothing further peculiar about the prisoner. One witness mentioned that in consequence of the prisoner's hot temper, he had refused to let his son read with him. And the Civil Surgeon who had the prisoner under his charge for ten weeks, for the purpose of observing his conduct, saw no reason to think that he had ever been of unsound mind. He was of opinion that the prisoner's manner and silence during the first part of the time he was under treatment, were owing to the wound, which was no doubt painful, and rendered silence almost compulsory, and also probably to remorse for his crime. I would convict the prisoner on both counts, and sentence him under the provisions of Regulation XII. of 1829, to ten years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Sconce and G. Loch.) The Court consider the charge upon which the prisoner has been tried, to be satisfactorily proved against him by the evidence of the prosecutor Shahamutoollah, and the witnesses Nos. 9, 12, 13 and 14, and convicting him of having wounded the girl, Hafizun, with intent to murder her,

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do sentence him, as recommended by the Sessions Judge, to ten years' imprisonment with labor and irons.

The Court have been obliged to disregard the whole of the evidence given by Hafizun and the witnesses Nos. 1, 2, 3, 4 and 5, as it has not been taken according to law. Both the Sessions Judge and Magistrate appear to have misunderstood the purport of Act II. 1855, and to have thought that because the children were too young to understand the nature of an oath or solemn affirmation, they were to be examined *without any affirmation*. The Judge should first have ascertained from each of these witnesses whether he or she understood the nature of an oath; and should have recorded the answers; and if the witness pleaded ignorance, or the judge were otherwise satisfied that the witness was of immature age, he should have been required to give his evidence on *simple* affirmation as provided for in Section 15, Act II 1855, and a note to that effect should have been recorded at the commencement of the deposition. Evidence taken without such simple affirmation is not available on the trial for the conviction of a prisoner.

PRESENT:

A. SCONCE, Esq., *Judge* and G. LOCH, Esq., *Officiating Judge.*

GOVERNMENT

versus

GOPAUL GHOSE CHASSA.

Hooghly.

1858.

September 24.

Case of Gopaul Ghose Chassa.

Prisoner convicted of belonging to a gang of Dacoits on the evidence of approvers, corroborated by circumstances recorded independent of their testimony.

Crime Charged.—1st count, dacoity on the night of the 24th September, 1845, in the houses of Bhurrut Nundee and Banessur Mookerjee of Sijney Thannah Mouleshur, zillah Burdwan; 2nd count, dacoity with murder in the house of Kistomohun Bhuttacharea of Nubusta, thannah Gangoor, zillah Burdwan, on the night of 5th May, 1850; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chunder Seekur Roy, Deputy Magistrate for the suppression of dacoity at Hooghly.

Tried before Mr. E. Jackson, Officiating Additional Sessions Judge of Hooghly, on the 14th August, 1858.

Remarks by the Officiating Additional Sessions Judge.—The prisoner pleaded *not guilty*.

Three approvers give evidence against him, charging him with having belonged to a gang of dacoits living in the village of Bijoor thannah Mouleshur, zillah Burdwan, at the head of which was the notorious Sonatun Mundul, who was sentenced to transportation for life by the Nizamut Adawlut, on his own

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confession that he had been concerned in thirty-five dacoities, vide Nizamut Adawlut Reports, dated 30th October, 1855.

The first approver, No. 1, Shoobul Chung, alone was present in the first dacoity charged, viz. that at Sheezna, on the night of the 24th September, 1845, when two houses were attacked, the first that of Baneshur Brahmin, the second belonging to Bhurrut Nundee, who was plundered of 3,000 Rs. worth of property. The approver's account of this crime is correct, as correct as far as it goes. It was detailed by him in January, 1858. To corroborate his statement is produced the confession made by the head of the gang, Sonatun Mundul, three years ago. There can be no doubt that they have not colluded, as Sonatun Mundul was transported in the year 1855. Still the account given by both, points to the same gang and to the same circumstances attending the dacoity. Sonatun gives much fuller particulars and, as the leader of the gang, is acquainted with all matters connected with it. Both Sonatun's confession and the approver's deposition and confession implicate the prisoner, Gopaul Chassa, in this crime.

A reference to the record shows that it contains strong corroboration of their statement. The villagers of Bijoor had ascertained that several of the bad characters were absent on the night this dacoity was committed, and they were on the watch to arrest them on their return. They did seize one Doollub Gwala of Bijoor with a bundle of property upon him. On being questioned, he acknowledged that Sonatun Mundul and nine or ten others, among them the prisoner No. 1, Gopaul Chassa, had taken him to commit a dacoity. He denied this afterwards, but on this statement of his, others of the gang, Mudoo Ghose, the prisoner's brother, Sagur Khan and Anoop Ghose, all named by the approvers, were arrested. The two latter, however, alone were convicted. Mudoo Ghose, Sonatun Mundul, Chundee Bagdee and Doollub Gwala were called on to furnish security, but were released on appeal.

Record No. 300, page 5.

Burdwan Magistrate *roobooca-ree*, pages 281-282.

The two approver-witnesses, Nos. 2 and 3, give evidence that the prisoner and others of his gang was present with them in the Nubustah dacoity. They state that he was wounded in this dacoity, in which a fight took place between the Brahmin, owner of the house, and the dacoits, the result of which was that the Brahmin received wounds which caused his death, and several of the dacoits also suffered severely. The statements of these approvers were recorded before the Deputy Magistrate, in March 1858 and on the 6th May, 1858, whereas the prisoner was not arrested till the 30th May, 1858. They have consistently named him as one of the gang in the Nubusta dacoity.

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The record corroborates their statements as well as the evidence given in this Court by witness No. 4, Oomaro Khan Phaureedar. The Police were on the search to discover what bad characters might be wounded. On the 9th May, the above witness discovered the prisoner concealed in his father-in-law's house in Joogram with several fresh sword wounds upon him. He did not give any satisfactory account of them at the time, but there was no evidence to connect him with the dacoity and he was accordingly released. The existence of these wounds is, however, very strong corroboration of the approver's evidence.

Record No. 134.

Pages 15 and 24.

Page 26.

Page 130.

The prisoner urges in his defence that he was a servant of Surgonath Roy, whereas the approvers were servants of Neelkant Roy; that these two men were at enmity with one another and on this account the approvers have now implicated him, and on that account he was implicated in the Sheezna dacoity. He accounts for the wounds, said to have been inflicted by him in the second dacoity charged, by saying that he fell from his own roof which he was thatching and thus caused them.

His witnesses give him a very bad character and say that he is notorious in his own village. From one of them, it is elicited that Surgonath Roy and Neelkant Roy have been dead for years. The enmity, the prisoner alludes to, did exist. Sonatun Mundul in his confession, states that it was that which led to the discovery of the gang on that occasion.

The evidence produced proves to my satisfaction, that the prisoner belonged to a gang of dacoits in Bijoor and was present in the dacoities charged in the first and second counts. I, therefore, convict him of all the charges and recommend that he be sentenced to transportation for life.

The records produced prove that he has been for years a notorious dacoit. First, he was arrested in the Sheezna dacoity in March, 1845. Secondly, he was arrested in a dacoity in Manna in July, 1847, in which one of the Bijoor gang was killed by a chowkeedar. Thirdly, he was arrested in the Nubustah dacoity in May, 1850. Fourthly, he was suspected but not arrested in the Jaboorje dacoity in March, 1851, in which both approvers, Nos. 2 and 3, denounce him in their first confessions. And in the year 1856, he was convicted of being a notorious bad character and sent to jail for one year in default of furnishing security.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Sconce and G. Loch.) We convict the prisoner of belonging to a gang of dacoits, for reasons corresponding with those assigned by the Officiating Additional Sessions Judge.

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We have the evidence of three approvers, shewing that the prisoner took part in two different expeditions: and the circumstances that transpired at the original investigation of the dacoities perpetrated on these two occasions, furnish strong corroboration of the approver's statements. In the Sijney dacoities, the prisoner was named in the confession made by one Sagur Khan on the 25th September, 1845; and it appears also that the prisoner's brother Mudhoo Ghose, by his own admission to the police, took part in the expedition. And again as to the second dacoity in Nubusta, during the course of which, Kisto Mohun, residing in the house attacked, opposed and wounded several dacoits, it appears that the prisoner Gopaul was shortly afterwards arrested with the marks of sword wounds fresh upon his body.

Prisoner gives no satisfactory account of those injuries. He says he fell from the roof of a house and was cut by the tiles. His witnesses say only that he bears a very bad character.

We sentence the prisoner Gopaul Ghose, to be imprisoned in transportation for life.

QUARTERLY

No.

FOR OCTOBER, NOVEMBER, AND DECEMBER.

1858.

NOTICE.

WITH reference to Government Order, dated the 27th May, 1857, No. 2783, *Quarterly* Numbers only of Selected cases are published.

REGULAR CASES.

OCTOBER,

1858.

REGULAR CASES.

OCTOBER, 1858.

PRESENT:

C. B. TREVOR AND H. V. BAYLEY, ESQS.,
Officiating Judges.

GOVERNMENT
versus
SHAMA HARI.

Moorshedabad.

1858.

October 1.

Case of SHAMA HARI.

Prisoner released, the evidence of the approver-witness, Mutra Hari, has been declared by the Sessions Judge of Hooghly in his letter dated 13th July, 1858, to be untrustworthy and there being no other sufficient evidence for his conviction.

CRIME CHARGED.—1st count, dacoity on the night of the 20th September, 1849, corresponding with 5th Asheen, 1256, in the house of Bishembhur Audhecaree of Shamshabad, thannah Kulibangunge, zillah Moorshedabad; 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Hem Chunder Kur, Deputy Magistrate for the suppression of dacoity.

Tried before Mr. J. E. S. Lillie, Additional Sessions Judge, on the 25th June, 1858

Remarks by the Additional Sessions Judge.—The prisoner is implicated in the dacoity specified in the charge by two approver-witnesses;* but No. 2 did not name him in his original confession. The record shows, that the prisoner was apprehended at the time of the occurrence. It appears that one Gunga Chamar was recognised by the owner of the house; and that, on being apprehended, he stated that the prisoner and others had asked him to accompany them to commit the dacoity in question. The record was traced in consequence of the confession of approver-witness No. 1. The evidence of that witness has been received by the Nizamut in the trials† of the other approver-witness and of Khettra Hari.

* Wit. No. 1, Mutra Hari.
,, ,, 2, Fukeer Kooror.

† Dated the 3rd instant.

The prisoner stated before the Deputy Magistrate that he was unaware why the approver-witnesses had denounced him. In this Court he states that approver-witness No. 1 entertains enmity against him, because he supposed that he, prisoner, had caused the Darogah to trace and apprehend him, approver-witness, in a case of dacoity. Witnesses Nos. 3 to 4 depose unfavorably of the prisoner's character.

I consider that the first count is proved, the omission of witness No. 2, to name the prisoner may have been the result

1858. October 1. Case of SHAMA HARI.

of forgetfulness. The evidence of the other approver-witness is unimpeachable, and, supported by the confirmation afforded by the record, it is conclusive of the prisoner's guilt. The prisoner was a village Chowkeedar at the time of the occurrence of the dacoity.

I convict the prisoner of the crime of dacoity and sentence him to be imprisoned for sixteen (16) years' (including two years in lieu of corporal punishment) with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor and H. V. Bayley.) The prisoner has appealed from the sentence passed against him on the 29th June, 1858, of imprisonment for sixteen years, (including two years in lieu of corporal punishment) with labor in irons in banishment.

The sentence of the Sessions Judge is founded upon the evidence of one approver-witness, Mutra Hari, by name, supported by the confirmation afforded by the record.

The statement of approver Mutra Hari has been since declared, in a letter from the Sessions Judge of Hooghly, dated the 11th July, 1858, to be untrustworthy. Such being the case the present case as against the prisoner, is unsupported by sufficient evidence; and he becomes entitled to his immediate release.

PRESENT:

C. B. TREVOR AND H. V. BAYLEY, ESQS.,
Officiating Judges.

GOVERNMENT
versus
BEHAREE MUSSULMAN.

Moorsheda-bad.

1858. October 1. Case of BEHAREE MUSSULMAN.

Prisoner acquitted, the Judge having, in a letter sent by him subsequently to the trial, declared the evidence of

CRIME CHARGED.—1st count, dacoity on the night of the 20th September, 1849, corresponding with 5th Asheen, 1256, in the house of Bishembhur Adhecaree of Shamshabad, thannah Kuliangunge, zillah Moorshedabad; 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Hem Chunder Kur, Deputy Magistrate for the suppression of dacoits.

Tried before Mr. J. E. S. Lillie, Additional Sessions Judge, on the 25th June, 1858.

Remarks by the Additional Sessions Judge.—The prisoner is implicated in the dacoity specified in the charge by two approver-witnesses;* and the

* Wit. No. 1, Mutra Hari.
" " 2, Fukeer Kooror.

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Case of BEHAREE MUSSULMAN.

The approver on whose testimony he was convicted, untrustworthy and as without that evidence, there is no proof against him.

record, which was traced in consequence of the confession of approver-witness No. 1, shows that one Ramloll Koomar was arrested through the information* of Kashee Chowkeedar; that the former confessed† before the darogah and criminated the prisoner and the two approver-witnesses; and that he repeated his confession before the Magistrate with some modifications and reservations, but still criminating the prisoner and witnesses. Approver-witness No. 1, has been examined with respect to this dacoity in the trials of the other approver witness and of Khettra Hari, who were sentenced by the Nizamut Adawlut on the 8th instant.

* *Nuthee* No. 273, page 97.

† Page 63.

The prisoner stated before the Deputy Magistrate that the two approver-witnesses through enmity, formerly caused an enquiry to be instituted regarding his mode of life, and that they have now accused him on account of the same enmity. In this Court he states that he had a quarrel with approver-witness No. 1, who was the Chowkeedar of his village, regarding the payment of his dues; and that that witness falsely preferred a charge against him to the Darogah, and was eventually punished by the Darogah. Witnesses Nos. 3 to 5 depose that the prisoner is a bad character.

I consider that the first count is proved, the evidence of the approver-witnesses has been satisfactorily confirmed, and in a manner which precludes the possibility of collusion.

I convict the prisoner of the crime of dacoity and sentence him to be imprisoned for fourteen (14) years with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor and H. V. Bayley.) As the Sessions Judge has, in his letter No. 31, of the 13th July, 1858, recorded that the statements of Fukeer Kooror and Mutra Hari, approver-witnesses, are not to be trusted, and as there are no other witnesses entered in the Calendar, we acquit the prisoner and direct his immediate release.

PRESENT:

C. B. TREVOR AND H. V. BAYLEY, ESQS.,
Officiating Judges.

GOVERNMENT AND MUSST. INDERNIA
versus
KURRUM CHUND.

Bhaugulpore.

1858.

October 7.

Case of KURRUM CHUND.

Prisoner convicted of murder of one child, on violent presumption, acquitted of the murder of the other, an infant, as it might have died from want of its natural food. Under the circumstances, a sentence of transportation for life was passed.

CRIME CHARGED.—Wilful murder of his two children, one named Somnee and the other unnamed, aged, respectively, about two years, and two months.

Committing Officer.—Mr. W. Ainslie, Magistrate of Bhaugulpore.

Tried before Mr. T. Sandys, Sessions Judge of Bhaugulpore, on the 26th July, 1858.

Remarks by the Sessions Judge.—Prosecutrix, quite a young girl, is prisoner's wife. They had two children, girls, one an infant at the breast and the other above a year old. Prosecutrix's family belonged to Burra Seyr, and the prisoner's to Burduha, villages six miles distant. Prosecutrix's family appear to have been very poor. She has no near relatives living, her mother though originally stated to be living, is described as a beggar and now not to be found. Prosecutrix herself, whilst at Burra Seyr with her children, and as the within witnesses say, lived as a beggar, her nearest connection Gopal, witness No. 13, being too poor to maintain her. Prisoner's family, consisting of father, mother and sons, were in somewhat better circumstances. Throughout, not a syllable has been ever said to prosecutrix's disparagement.

Wit. No. 13, Gopal.
" " 14, Kishna Misser.
" " 15, Buchee Misser.
" " 16, Kishna Bugal.
" " 17, Jhumun Hulwai.
" " 18, Choolhaie Mooshin.
Police Report 8th September, 1857, No. 25.

Husband and wife quarrelled, she complaining he did not maintain her properly, and she left his house for Burra Seyr unopposed by him, taking her children with her. On an afternoon about twelve days before the discovery of the crime charged, she suddenly returned, and, making over her children to her mother-in-law, Dhunnia (witness No. 7,) during the prisoner's absence, saying it was for him to maintain them, went away. The three first witnesses, chowkeedar and neighbours, heard the children crying during the night, and, on enquiring the next morning about them, prisoner said "their mother had taken

Wit. No. 1, Sobhun Chowkeedar.
" " 2, Dumree Kulal.
" " 3, Somrun Munder.
" " 7, Dhunnia.
" " 10, Mukroo Munder.

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them away again." This, under the circumstances, was readily credited. Some twelve days afterwards, the chowkeedar, Sobhun, witness No. 1, happening to meet the prosecutrix near Burra Seyr, enquiries followed after the children, on which prosecutrix accompanied Sobhun to Burduha, and demanded her children of the prisoner. He retorted; and their altercations attracting suspicion, both prosecutrix and prisoner were detained, and the matter at once reported to the police by Sobhun, on 5th September last.

Wit. No. 1, Sobhun Chowkeedar.
" " 2, Dunree Kulal.
" " 3, Somrun Munder.

The police, arriving at Burduha, the next day, found Dhunnia, (witness No. 7,) prisoner's mother, and the prisoner only at home. His father and brothers had disappeared, and the former and one of the latter were not forthcoming until the 9th, following.

Wit. No. 7, at thannah, 6th September, No. 10.
Do. before Deputy Magistrate 8th Idem 91.
" " 8, Kookroo.
" " 9, Lall Doss.
" " 11, Bylal Jha Doss.

Dhunnia at once admitted the prisoner's having taken charge of the children on his return home. At night she heard the children crying, went to sleep again, and next morning on her enquiring about them, the prisoner told her "they were his children, their mother was always quarrelling with him. He had strangled and buried them at the Muhadeyo ghat in the Teliva Nuddee." She then took the police and witnesses there, where after wearying them with a useless search after the unfortunate children's remains, she at last said they would be found at Gunput Misser's Kuror, a deserted jungle, pond or tank in a hollow, half a mile distant from the *nuddee*, and 25 to 30 *russees* 1260 to 1500 yards from prisoner's dwelling. There she at once pointed them out, consisting of "one frontal, two parietal, one occipital, two temporal, and five ribs belonging to a child of a month and upwards, probably of six or seven months. One upper jaw probably about a year old. One frontal, two parietal and five ribs belonging to a child under one month. It was impossible to distinguish the sex, or state with certainty the age. The upper jaw and the larger bones may all have belonged to the same child." A *haree* or neck ornament said to have been worn by one of the children was found near them in the presence of the same party. Dhunnia's deposition, before the Deputy Magistrate two days

Wit. No. 8, Kookroo.
" " 9, Lall Doss.
" " 11, Bylal Jha Doss.

Wit. No. 1, Sobhun chowkeedar.
" " 4, Jeewun Mooshur.
" " 5, Saheb Mooshur.
" " 8, Kookroo.
" " 9, Lall Doss.
" " 11, Bylall Jha Doss.
" " 6, Dr. Farncombe.

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afterwards, on 8th September, mostly extracted from her under examination, apparently unwillingly, and with a considerable degree of equivocation, yet recognized the same facts under an altered shape. Her son, the prisoner, had told her the infant had died of hunger, and he had strangled the eldest and had thrown their bodies away in the mud of the *nuddee*, and she had finally pointed them out in the "Kuror," because there was no other similar likely place in the village. When the trial came on before this Court, she had absented herself and was not forthcoming until after postponement of the trial on her account, and her attendance had been insisted on. She then repeated the general circumstances of the case, carefully avoiding the information she had originally given against her son, and denying having so deposed, when her police statement and her deposition before the Deputy Magistrate were read out to her. She then adopted for the first time, the story first set up by the runaway father and son, about the children having been carried off by a hyena. I have directed her commitment for perjury.

The prisoner's statement to the police, on 6th September, is very curt, acknowledging, however, his having received the children, gone to sleep with them and on awaking not finding them, when questioned what had become of them, he did not know. He mentioned it to no one. He searched for them amongst his wife's family (she has none) but did not find them, which rests solely on his simple allegation, for all the evidence and circumstances of the case are to the contrary. When asked why he did not report the occurrence, and how his mother evidenced against him, and had pointed out the remains of his unfortunate children, he made no reply. His defence before the Deputy Magistrate, on 9th following, was much to the same purport. Let it be remembered he then made no mention of the hyena story, which was first started that very same day at a distance in the mofussil by his runaway father to the police No. 47, to the effect that he himself had suggested the probability of such a thing to his son, the morning after the occurrence! Before this court, prisoner added his mother Dhunnia, witness No. 7, and himself searching, found the remains at the "Kuror." Asked, when, he replied, one day before the police arrived. It was now too, after the lapse of so many months that he mentioned his suspicions of a hyena for the first time. Further questioned, if this fresh pretended search was true, why, in that case, his mother should have taken the police and villagers first to the Tilwa Nuddee and thence to the Kuror, he became dogged, and would give no intelligible reply. His callous conduct is best shown by such answers. "His wife took the children away and brought them back again at her pleasure." Asked why indifferent, according to

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his own story, as to what had become of his children for upwards of 9 to 10 days. He replied "like mother, like father." He concealed what had happened so long, supposing his wife might have taken the children away, but this is directly adverse to his original statement of his having sought for them at his wife's village. He also pleaded "*Autrefois* acquit," but that cannot avail him. His release by the Deputy Magistrate, on 22nd September last, No. 64, was not an acquittal, but distinctly conditioned on better proof not being forthcoming against him. The Magistrate reviving the case, ordered his re-apprehension, explained as follows in the calendar.

"The report of the Deputy Magistrate of Muddehpoorah "having come under my notice, I called for the papers for "examination.

"Finding the evidence so strong, as to leave little reasonable "doubt that the bones found were the remains of the children, 'and that the only ground for the release of the prisoner was 'a report by the Civil Surgeon (who had not been examined 'in Court) which was by no means sufficient to set aside the rest 'of the evidence, as, after all, it only tended to prove that the bones found could not have belonged to the younger child, "I ordered the prisoner to be re-apprehended, and summoned the "Civil Surgeon. His evidence differs materially from the pre'vious report, but he has preserved the bones up to this time 'and founds his present opinion on a re-examination of them. "The evidence appears to me quite conclusive, and I therefore 'commit the prisoner for trial."

Prisoner has never called any witnesses.

The jury unanimously acquit the prisoner of wilful murder, but convict him of culpable homicide.

Mohn Ram Jha of Eshaqchuq, Bhagulpore,
Hurdial Singh, Nya Bazar, ditto.
Sheikh Muhbooballi of Doulutpore, ditto.
Furqund Alli, Khuleefabag, do.

Such a verdict is necessarily faulty; a kind of half compromise in the native mind where direct proof of the highest crime is wanting. In such a case, the crime must amount to an unnaturally cruel murder or to none at all. Of direct evidence, of course, there is none, and the decision becomes a painfully difficult one as resting on niceties which, at the distant date the trial took place before this Court, has been very much aggravated by the prevarications of both prosecutrix and witnesses and the perjury of the prisoner's mother Dhunnia, witness No. 7. The design has been pretty general to break down the trial in an underhand way before this Court, or I should not have had so much difficulty to the very last, in eliciting the simplest particular about the prosecutrix and her family in her own village. From an observation impatiently and indistinctly made by one of the witnesses whilst

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under cross-examination, and which he would not repeat, there is some reason to suppose husband and wife have come together again. Nothing too morbid in itself for such an unnatural crime, the people or the country; but which of course indefinitely defeats the ends of justice. Still, there remain certain ugly facts which no laxity can set aside. There can be little doubt that the remains found were those of the two helpless little victims, who were acknowledgedly last alive in their father, the prisoner's charge. I reject the story *in toto* about their having been carried off by a hyena or wild animal, as shewn by the prisoner's and his own family statements, to be a palpable after-thought, and grossly improbable in itself. Two infants would scarcely have been carried off in this way and their remains found together. One wild animal would hardly have carried off both together, and one or several could never have done so without at the time creating a hubbub in the village, let the prisoner have slept ever so soundly. I doubt the possibility of their having been in any such manner snatched away from their father's side, either by man or beast without alarm and detection at the time. The risks, in all respects, were double with two infants. It is in evidence that the neighbours were alarmed by the children's cries, which, however, under the circumstances, very naturally only led to enquiries about them the next morning. The Deputy Magistrate discredits this evidence, apparently because folks should have been so attentive of children's cries during the night, as might be the case ordinarily, but not so in the present instance as singularly extraordinary. The young wife's singular history, her unchecked absence with her children from her husband's house, her sudden return and departure after leaving, in her abject beggary, her children at their father's house, are all admitted facts, which alone would have caused unusual talk and observation amongst the neighbours. The cries of two infants deserted in such a manner must, from that cause alone, have been unusual and pitiable. With their sudden cessation, therefore, it was natural enough the neighbours should have been satisfied with the prisoner's reply the next morning that they had returned to their mother. In all this, under the circumstances, I find nothing but what is reconciliable and truthful. Had there been no crime, why such an immediate and effectual lie? and which so successfully silenced the prisoner's fellow villagers for a period of 9 to 10 days, and which at the same time so directly gives the lie to his pretended search for the children the next morning at his wife's village; which, had it really taken place, prisoner and his family could not have maintained the criminal silence they did about the occurrence for the 9 to 10 days subsequent. If his mother Dhunnia's evidence in the lower Court is true, there can be no question of her son,

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the prisoner's guilt. Instead of her perjury before this Court helping to set it aside, it should rather confirm it, for the prisoner himself from first to last has never attempted to question such evidence in any way, unless his general wild accusation at so late a date in this Court against the police perhaps, leisurely picked up in "*hajut*" is allowed to throw doubts on the matter. But this I cannot admit in the present instance, although ready at all times to view native police investigations with much distrust. The course of investigation and its results seem natural throughout. With the discovery of the crime, all hands looked to the prisoner's family for its explanation. All had disappeared, except the mother and prisoner, and the former, unable to bear the odium in the face of all her curious neighbours, points to the real criminal and corroborates it by the discovery of the remains. All this is very unwillingly done on the spur of the moment, and as soon after confirmed before the Deputy Magistrate, but by the time, months afterwards, that the different parties reach this Court, all have cooled down, and are too ready to allow so nice a matter to drop through. There can be no doubt that the real truth is to be looked for, not so much in what has come out before the Sessions Court, but what really took place in the original investigation, which is totally free from any possible motive for false conduct, and which, in any case, was at least confirmed before the Deputy Magistrate. There is one point unsatisfactory in the wife's conduct, exclusive of her desertion of her infants forced on her by her husband's misconduct. It was late in the afternoon when she abandoned her infants at her husband's dwelling. Her village was too distant for her to have returned there that night. She told the police she had passed that night at Rampore, and reached her own village the next morning. This she denied before this Court, saying, she had returned direct to her own village. But against this I weigh her acknowledged good behaviour until before this Court, and her husband's as directly contrary. Except as already viewed, the plainly false excuse that the wife might have taken the children away again, neither prisoner or his mother have ever said any thing to her disadvantage. She was the first to discover the crime, and that, in the wretched circumstances in which her husband's neglect had left her, in the most natural way; whilst the conduct of prisoner and his family has been studied concealment and prevarication throughout, of itself criminal. Thus viewing this dark unnatural crime in all its ascertainable bearings, I convict the prisoner, on strong presumption, of the wilful murder of his two children, but, under the difficulties attending the case, barring capital punishment, I would sentence him to transportation beyond sea for life.

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Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor and H. V Bayley.) The prisoner is charged with the wilful murder of his two daughters, aged about two years, and two months respectively.

The evidence of Musst. Dunnia, witness No. 7, the grandmother of the children, though varying at different stages, and in certain points, is at the trial before the Sessions Judge, clear and consistent as to the following; viz. that the children were left by their mother with the prisoner; that they slept with the prisoner in a separate round-thatched shed on the night of the 25th August; that they were never again seen by her alive; that the elder had a red and white bead necklace; that bones deposed to, by the Civil Surgeon of the station, to be bones of infants, were found in the presence of witness No. 7, in a (spot proved to have been pointed out by witness No. 7,) viz. a tank in a hollow called Gunput Misser's Kuror; that a red and white bead necklace was also found in the same place in her presence.

The Civil Surgeon's evidence is given in full in the letter of the Sessions Judge; and shews that the bones were those of young children, though the particular age of each child could not be deduced from the bones alone.

Two witnesses Nos. 2 and 3, deposed before the Committing Officer that they had before seen the necklace, (found with the bones), upon the elder of the deceased children; but they were not questioned on this important and relevant point, by the Sessions Judge. Still there is clear evidence that the necklace which witness No. 7, deposes to have been on the elder child was found with the bones at the spot deposed to by the witnesses as pointed out by witness No. 7, and thus the bones are connected with the children in a degree which, but for the necklace, would have been impossible.

Witnesses Nos. 1, 4, 5, 8, 9 and 11, depose that the bones and necklace produced at the trial were found at the spot indicated by witness No. 7, at the place where, if search were made, the remains of the children would be found.

The defence at the Sessions trial is mainly that the children were taken off by a Hyena. But this was not pleaded by the prisoner till the Sessions trial, and is in no way proved.

We have great doubts as to the degree of complicity of the witness No. 7, Dunnia, and think it probable that she, to a great extent, was an accomplice in the murder. Viewing therefore her evidence with proper caution, and relying on it only so far as it is confirmed by that of other witnesses, we think there is sufficient evidence to convict the prisoner on strong presumption of the wilful murder of the elder child. The younger infant may have died of the want of its natural food. It is proved to have been an infant at the breast of its mother, and,

the mother to have left it, and we therefore cannot presume its murder from the case before us. We think it right, under all the circumstances of the case, not to pass an irrevocable sentence. We therefore order the prisoner to be imprisoned for life in transportation beyond seas.

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PRESENT:

A. SCONCE, ESQ., *Judge* AND G. LOCH, ESQ., *Officiating Judge.*

GOVERNMENT AND RAIMONEY TELLINEE

versus

SURROOP CHOWKEEDAR (No. 1,) RAMCHAND PATTER (No. 2,) MUKBOOL ALLY FAREEDAR (No. 3,) AND GOOROODOSS CHATTERJEE GOMASHTA (No. 4.)

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Prisoners under trial are acquitted, the investigation being in some respects incomplete and the evidence in chief, unworthy of credit.

CRIME CHARGED.—1st count, Nos. 1 and 2, highway robbery with murder of Lallchand Nundy, deceased, and theft of 24-5 rupees from the said deceased; 2nd count, against all the prisoners, accessaryship after the fact in the above crime; 3rd count, against all the prisoners, privity to the above crime.

Committing Officer.—Mr. J. J. Grey, Magistrate of Howrah.

Tried before Mr. E. Jackson, Officiating Additional Sessions Judge, on the 31st July, 1858.

Remarks by the Officiating Additional Sessions Judge.—The case has been tried with the assistance of the Law Officer, who agrees with me in the conviction of prisoners Nos. 1 and 2, on the 2nd count and prisoners Nos. 3 and 4, on the 3rd count: the papers are therefore submitted for final sentence to the Nizamut Adawlut.

The circumstances of the robbery and murder are as follows.

Witness No. 20, Sreeram Dhon, states that on Sunday the 2nd May, Lallchand Set, his partner in a tobacco-shop at Sheebpore, zillah Howrah, left that town to go to his own home at Udoypore in thannah Khanakool, zillah Hooghly, and that he had on his person at the time, rupees 25-4.

Witnesses Nos. 23, 24 and 25, friends of Lallchand, prove that on the same day they met Lallchand in witness Nos. 26's house; witness No. 26 proves that Lallchand left her house the same night about 10 o'clock. As he did not reach home, his mother and mother-in-law commenced to make enquiries for him, and witnesses Nos. 23 and 25, on their way back from Calcutta to Udoypore on the following Thursday, heard from

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people on the road, that some traveller had been killed near the village of Pundooa. On reaching which, they saw and indentified Lallchand Set's body lying on the side of the road being eaten by dogs and jackals. They state that they did not remark any particular marks of wounds upon him, nor did they make any enquiry as to how he met his death, but went on their way and found his mother searching for her son, of whose death they told her. She is the prosecutrix and states that she went at once to Pundooa and saw the body and recognized it. She also states that she did not remark any marks or wounds on the body, but considering the time which had elapsed since Lallchand's death, viz. four days, this evidence is not incompatible with the fact of there having been wounds on his person, which, by that time, may have been no longer visible. Further, to prove the identity of the body as Lallchand's, witnesses Nos. 20 and 25, and the prosecutrix prove that the cloth as well as a *madoolee* found with it, belonged to Lallchand.

Prisoner No. 3, is the Phareedar of Poorush, a station almost in the village of Pundooa; he reported on the 3rd May to the Amptah thannah that a traveller had died near Pundooa of cholera, the Darogah deputed the jemadar to hold an inquest on the body which he did on the 4th May and on the 5th May reported the death as being the result of cholera.

No further notice was taken of the matter until the 12th May, when the Magistrate heard through one of his mohurrirs, that people were talking about a highway robbery and murder which had lately occurred at Pundooa and at once directed two Darogahs to enquire into the case. On the 13th and 14th May, they obtained evidence to the crime implicating the chowkeedar of Pundooa, prisoner No. 1, and Ramchand Bagdee, prisoner No. 2. On the 15th May, Surroop Chowkeedar was arrested and on the 16th he confessed; on the 16th May, Ramchand was arrested and on the 17th he confessed; Madhub Mal, the approver-witness, was also arrested on the 17th. It was on his evidence given on the 14th that prisoners Nos. 1 and 2, had been arrested, but prisoner No. 1 is said to have charged him in an unrecorded confession, with having concealed the most important facts which were in his knowledge. The Darogah therefore arrested him, and he confessed that he had concealed those facts. The police investigation was completed on the 24th May.

Before this Court, prisoner No. 1 denies the charge. His defence is that Lallchand died of cholera; that the shop-keepers of the Pundooa Bazar, especially witnesses Nos. 28 and 29, had turned Lallchand out of their houses when closing their shops on the Saturday night, because he was ill of cholera and vomited; that he had remained the night under a tree on the other side of the Khal and there died. His confession before

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the Darogah and Magistrate he says was owing to bad treatment. Witnesses Nos. 8 and 9, prove his confession before the Darogah, which witnesses Nos. 15 and 16 prove was repeated before the Magistrate. It is to this effect, that on the Sunday morning, while he was at his post in the Pundooa *haut*, he heard a cry from the other side of the Khal; that he went across to see what had occurred, met Ramchand Bagdee and Guggun (who has not been apprehended) running towards the village with sticks in their hands and the former with a bundle under his arm; that he asked them what had happened, but they said they did not know; that going a little further he found a man's body hanging to a tree; that he informed the village Gomasta, prisoner No. 4, who told him to cut the body down and conceal it, which he did. Before the Darogah he is said to have made a second confession when he was starting for the Sudder station, but the Darogah did not record this, because he had already made one confession which appears to me an insufficient reason.

Prisoner No. 2, also pleads *not guilty* in this Court, and attributes his arrest to enmity with Madhub Mal, who informed against him. Before the Darogah and the Magistrate, witnesses Nos. 13 and 18 prove that he acknowledged to having seen Surroop Chowkeedar murder and rob the deceased, and to having received from him a bribe of three rupees to hold his tongue.

Madhub Mal admitted, as a witness states, that he was sleeping under a small thatch in his melon field on Sunday morning before daylight, when he was awoke by a noise and looking out, saw Ramchand Bagdee, prisoner No. 2 and Guggun stop a traveller, who endeavoured to escape them by running into a clump of *asud* trees when he lost sight of them, but whence he heard cries immediately after. The next morning after daylight he saw a body hanging from one of the trees, he saw Surroop cut it down, and Surroop and Ramchand conceal it in a hole by covering it with leaves.

Witness No. 21, Panchoo Mundul corroborates this story inasmuch as he was also sleeping close by in his field. He heard a man cry out in the night, but thought nothing of it, and the next morning he saw Surroop cut down the body and Surroop and Ramchand conceal it.

Witnesses Nos. 4, 5, 6 and 7, inhabitants of neighbouring villages state, that they were passing along the road on the Sunday morning and saw the body of a man lying under the clump of trees, and that it then bore marks of foul play, seeing its nose broken and bloody, and marks on its neck. They afterwards heard that the gomashta and phareedar had reported the death to have been caused by cholera.

Witnesses Nos. 28 and 29, shop-keepers in the Pundooa Bazar, also saw the body, and observed the marks on the Sun-

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day; they were called to examine the body by the phareedar and gomashta, who afterwards wrote out some papers in the Pundooa *haut*, and told them and the other shop-keepers that the death was owing to cholera and that they were to say so.

Prisoner No. 3, pleads *not guilty;* asserts that the man did die of cholera, and had no marks upon his body, and that he reported according to the statement of the chowkeedar and of the witnesses who saw the body. He further hints that the zemindar of the village is Baboo Prannath Chowdree, and that it is notorious that no one dare give intelligence of any thing in his estates, which remark I can understand only as an acknowledgment that there was some concealment in this case, but that it was the villagers who were to blame and not he.

Prisoner No. 4, the gomashta of the village, pleads *not guilty*, asserts that he heard the man died from cholera, and sent a written report to that effect to the thannah.

The witnesses to the defence of prisoners Nos. 1 and 2, deny any knowledge of the facts which they are called to depose to.

The witnesses to the defence of prisoner No. 3, assert that Lallchand died of cholera. Some, that they saw the body, which had no marks on it; others, that they only heard the chowkeedar mention the fact.

The witnesses to the defence of prisoner No. 4, assert that they heard the chowkeedar inform the gomashta that a traveller had died of cholera, and that he wrote something and directed the chowkeedar to take it to the thannah.

The first point for consideration is, whether the fact of a highway robbery with murder having been committed is proved. I am of opinion that it has, that the identity of Lallchand Set, as the murdered man is also proved, that he had left witness No. 26's house about ten o'clock, that he had come on to Pundooa (whether he was turned out of the bazar by the shopkeepers is immaterial, it certainly is not proved, though it may be true) and that he crossed the *khal*, and then under the *asud* trees, he met his death. The marks on the body prove that the death was not natural and the rupees being missing, prove the robbery. If the death resulted from the suspension of the body while in a senseless state, the crime would be the same.

How the crime was actually committed, there is no satisfactory evidence to show, Madhub Mal's deposition is on this point uncorroborated. Ramchand cannot be convicted of having committed the murder on this one man's statement, particularly as he did not depose to this portion of his statement, till the prisoner Surroop implicated him as an accessary. Panchoo Mundul's statement that he heard a cry is not sufficient corroboration.

The confessions of the two prisoners Nos. 1 and 2, however,

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are sufficient to convict them of being accessaries after the fact to the crime, they each throw the commission of the crime upon the other, and the one, viz., the prisoner No. 2, confesses that he concealed the crime, though he saw it committed and that he received a bribe of Rupees 3 to do so, the other prisoner No. 1, that he concealed the crime, though he had heard the murdered man cry out, had found him hanging to a tree immediately afterwards, and had seen Ramchand and Guggun running from the spot.

Prisoners Nos. 3 and 4, I convict of privity to the crime. They cannot be convicted as accessaries, inasmuch as it does not appear that when they concealed their knowledge of it, sent a false report to the thannah, and told the shop-keepers that they must say that cholera caused the death, they were aware or had any grounds for suspicion that any particular person had committed the crime. But at the same time, as they took an active part in the concealment, I am of opinion that they should be severely punished.

It is to be hoped that the remark of prisoner No. 3, regarding the feeling in the estates of the large zemindar Baboo Prannath Chowdree, who holds extensive zemindaries in several of the districts of Bengal, is not correct.

In submitting the papers to the Nizamut Adawlut, I beg to recommend a sentence of seven years' imprisonment being passed on prisoners Nos. 1 and 2, and three years' imprisonment on Nos. 3 and 4.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Sconce and G. Loch.) There seems to be no reason to doubt that the dead body found outside of the village of Pundooa was that of Lallchand, son of the prosecutrix, Raemonee. This person kept a shop in Sheebpore, and it appears that on Saturday the 19th Bysakh he left his shop for the purpose of returning to his home in Oodeypore. On the morning of Sunday or on the morning of Monday, he was found dead at Pundooa. There is some uncertainty as to these dates, which the Sessions Judge has not sifted with sufficient care. Lallchand, it is shewn by some witnesses, stayed in the course of his journey home, at the house of one Banjee, to eat: and by the statement of Banjee herself, he left her house some time after nightfall of the 19th. But on the other hand, the zemindar's report of 5th May, appears to indicate that the death of Lallchand was discovered on the morning of the 21st Bysakh, Monday.

The tenor of this report, which purported to be attested by shop-keepers and others of Pundooa, was to the effect that on the evening of Sunday, Lallchand had arrived at the *haut*; that he was seized with illness (cholera); that the shop-keepers would not accommodate him, and that he lay down under a tree outside of the village, and, in the course of the night, died.

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There has been no satisfactory investigation as to the time of Lallchand's arrival at Pundooa. The Darogah's report of 14th May, seems to intimate that Lallchand had spent the best part of the night at Banjee's house, and starting early, reached Pundooa before dawn of Sunday and that after resting near some unknown shop, he again started on his journey and was waylaid.

The charges laid against these prisoners are mainly sustained by the deposition of the witness, Madhub Mal, and the confessions, as they are considered, of the prisoners Surroop and Ramchand. But we are not satisfied of the trustworthiness of any of these statements. The information recorded in the name of the witness Madhub, by the Darogah Bukaoollah, whom the Magistrate had deputed from anothar Thannah to investigate the circumstances attending this unnatural death, simply sets forth that he had seen in the morning a dead body hanging by a tree. He now says much more, namely, that in the first instance he had seen Ramchand and another dodge or hunt a man up and down till they got him into the shade of some trees; that he heard one cry "*bapre,*" and that he knew no more till he saw a body hanging from a tree at day-light.

The prisoner Surroop Chowkeedar's statement is, that towards the close of the night, he heard cries and running, saw Ramchand and Gugun making fast off; that he went on and saw a body suspended from a branch, and that he went and told the Gomashta Gooroodass, who said they would be all ruined, and desired him to cut the body down.

Ramchand on the other hand, is made to implicate Surroop; but his statements to the Darogah and the Magistrate differ and neither are quite intelligible. In the first he said as he was going to his melon field, he saw a traveller passing; that Surroop Chowkeedar, getting round him struck him violently on the face and felled him and then laying his *lattee* across the fallen man's neck, stood on it; that prisoner asked if he was committing murder; that Surroop gave him rupees 3, not to tell; and took a rope and hung the body from a tree: and so on. Before the Magistrate, Ramchand seems to ignore this story, for he says no more than that, in an unintelligible way, he had seen Surroop hang the body from a tree.

We place no reliance on these statements, which seem to us got up not to represent, but to misrepresent, the truth.

We have nothing to say in favor of the inhumanity of the people of Pandooa which suffered them to reject a sick traveller, nor indeed need we say that we accept the sickness and exposure and death of Lallchand as wholly proved. But taking the whole case as it comes before us, the undoubted fact that the dead body of Lallchand lay exposed at the place where he died for several days open to all men's sight and liable to

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be called in for examination by the Civil Surgeon, is against the hypothesis that he was by violence killed. No hesitation was shewn in reporting the occurrence of his death: and this early report was followed by the deputation of the Police Jemadar who held an inquest on the body. Besides, it appears to us, that if the Gomashta Gooroodass acted as Surroop represents him to have done, he must have resolved to ascribe the decease of Lallchand to a false cause without any adequate motive. Lallchand was to him an utter stranger; and personally he should seem to have less cause falsely to implicate himself and the shop-keepers by asserting the neglect and exposure of the sick traveller than to give information as to his murder, if he knew him to be murdered.

We do not observe that the Magistrate has taken any notice of the failure of the Police to apply for his instructions as to the disposal of the body of Lallchand. No corpse should be left on the highways to be consumed as carrion.

We acquit all the prisoners.

PRESENT:

C. B. TREVOR AND H. V. BAYLEY, ESQS.,
Officiating Judges.

GOVERNMENT

versus

BABOORAM BAGDEE (No. 8,) AND PREMCHAND BAGDEE (No. 9.)

Hooghly.

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Case of BABOORAM BAGDEE and another.

CRIME CHARGED.—1st count, dacoity on the night of the 9th March, 1858, in the house of Lakheenarain Doss of Goaberriah, thannah Sulkeah, zillah Howrah; 2nd count, dacoity on the night of the 1st June, 1853, in the house of Kallachand Sheik of Nowparah, thannah Jehanabad, zillah Hooghly; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. T. E. Ravenshaw, Commissioner for the suppression of dacoity at Hooghly.

Tried by Mr. E. Jackson, Officiating Additional Sessions Judge, on the 14th September, 1858.

Prisoner convicted under Act XXIV. of 1843 on his own confession.

Remarks on method of fully recording confessions at the Sessions.

Remarks by the Officiating Additional Sessions Judge.—Prisoner No. 8 pleads guilty, prisoner No. 9 *not guilty.* Their houses are in Keoteea in thannah Ryna,* zillah Burdwan, but they also reside at Howrah.

In the first count, they are charged with a dacoity at Howrah. It occurred on the 9th March, 1858, witness No. 1, the master of the house described the dacoity and stated that he

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armed himself with a large "*boutee*," a formidable looking knife for cutting vegetables, and with it wounded some of the dacoits. He also recognized one of the gang, Dabee Bagdee.

The Police appear to have followed up the clue which they obtained from the prosecutor with great skill. Witnesses deposed to them and Dabee Bagdee gave a statement before them, that he and the prisoners had been that night drinking at a grog-shop. It was also soon ascertained that prisoner No. 8, was one of the wounded parties.

Witness No. 18, Moozdeen Burkundaz describes the chase after prisoner No. 8 in which he was followed step by step through Calcutta, Chandernagore, Hooghly, Burdwan and back again to Howrah, where he was arrested. His mistress, witness No. 22, accompanied him in his flight. She was arrested at Kendoor in zillah Burdan, and on being callled on to give up the stolen property and searched rupees 47 was found on her person, and a cloth, which she stated that prisoner No. 8, had not before he went out on the occasion on which he was wounded, but which he brought back with him after it.

Witnesses Nos. 7 and 8, prove prisoner No. 8's confession before the Police, in which he admits that the abovementioned rupees and cloth are portion of the stolen property. Witnesses Nos. 11 and 12, prove his confession before the Magistrate of Howrah.

Witness No. 21½ proves the arrest of prisoner No. 9 on the 23rd April. On him was found a bundle containing two cloths. Witnesses Nos. 9 and 10, prove his confession the same day at the thannah, and Nos. 13 and 14, his confession the next morning before the Magistrate of Howrah, in both of which he admits that the cloths found on him were part of the stolen property.

The prosecutor recognizes the cloths found on both prisoners as his. Witness No. 19 speaks also to the same fact. Witness No. 20 is dead.

The whole case was subsequently transferred to the Dacoity Commissioner. Witnesses Nos. 15 and 16, prove that both prisoners again gave a full confession before that officer, prisoner No. 8 on the 26th, 28th 29th, of June and 2nd and 5th of July, prisoner No. 9 on the 3rd, 5th, 6th, 7th, 8th and 9th of July.

In these confessions prisoner No. 8 acknowledges to have belonged to gangs of dacoits in his own native village in zillah Burdwan, and with them to have committed the dacoity charged in 2nd count, also to have belonged to the Chandernagore dacoit gangs when he was a Chowkeedar in that town, which fact is corroborated by the previous confession of former approvers, who named him among their gangs, also by the record of the dacoity in the house of Mullicka Bewah on the 1st September, 1851, in which one of the Chadernagore gangs was

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seized in the act and mentioned him in his confession made on the spot, also to having in company with a Calcutta gang committed a dacoity so far south as Tumlook.

Prisoner No. 9's confession confines his crimes to his own part of the country in zillahs Burdwan and Hooghly where he acknowledges to have committed ten dacoities. In it he also admits one Howrah dacoity and one attempt at dacoity.

Witnesses Nos. 5 and 6, are two approvers, who had denounced both prisoners in the dacoity charged in 2nd count, of the Calendar on the 9th and 19th February, 1858, before the prisoners were apprehended in Howrah. This dacoity occurred in 1853. The approver's depositions are corroborated not only by the confessions of the prisoners before the dacoity commissioner; but as to prisoner No. 9, by his recognition at the time of the dacoity.

Prisoner, No. 9, urges in his defence that he was once the cause of arrest of approver-witness No. 5, he alludes to a particular record in which this will be proved. I have sent for the case but do not delay passing final orders as even admitting it to be true, the circumstance would tell as much against him as in his favor, when taken in connection with his confessions which he does not deny or attempt to rebut.

This is one of those cases in which the statements of the approvers charging the prisoners with being professional dacoits are corroborated, not only by what occurred at the time when they committed crime in company, but by the circumstance that five years later they are seized in the neighbourhood of Calcutta with another gang with the stolen property on them and one bearing the marks of the wounds inflicted during a dacoity, I convict the prisoners on all the counts of the calendar and recommend them to be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor and H. V. Bayley.) Prisoner No. 8, confesses to the Deputy Magistrate and the Sessions Judge. His confession is corroborated by the evidence of witness No. 1, as to the wounding one of the dacoits with a *boutee* which was prisoner's No. 8.

Witness No. 18, also corroborates this prisoner's confession as to his pursuit and capture.

Prisoner No. 9, confessed to the *Goaberriah* dacoity (1st count,) before the police and Magistrate of Howrah; and then before the Dacoity commissioner, to whom the case was transferred.

He confessed to the 2nd count, the *Naoparah* dacoity, in the dacoity commissioner's office; and also to nine other dacoities. The prisoner's confession as to the Naoparah dacoity is corroborated by the statement of Kalachand Sheikh, (the owner of

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the house,) the day after the dacoity, that he had recognized the prisoner.

Witnesses Nos. 5 and 6, also corroborate the confession of this prisoner on this 2nd count.

The confessions in the Dacoity commissioner's office are fully proved as freely and voluntarily given; and we see no reason to distrust them.

We therefore convict both prisoners under Act XXIV. of 1843, and sentence them under the same Act to be transported for life.

We request the attention of the Sessions Judge to the following remarks.

I. In para. 13 the Sessions Judge refers to prisoner's "con-"fessions, which he does not deny, or attempt to rebut." But the record does not shew that the prisoner was asked any questions as to them. He should have been so questioned; and in future it must invariably be recorded that the confessions have been read over to the prisoner, and that he denies or admits them, or what statements he makes, in regard to them.

II. In paras. 9, 10 and 11, the Sessions Judge records details as to the confessions of the prisoners to other dacoities. None of those details are to be found in the vernacular records of the Sessions trial. They should always be recorded there. It is quite right that the prisoner should be arraigned on each of the specific counts of his indictment, and this answer recorded as has been done in this case; but it is necessary also (as laid down by us in Tareef Sheikh's case of this date,) that his confession at the Sessions to the several detailed dacoities which he may have admitted to have been committed by him, should also be fully recorded. In a case like this, the prisoner should have been asked, if he had not confessed to or committed the other dacoities to which the committing officer's record referred; and his answers recorded, in order that it might be compared with the previous confessions, and with other records.

PRESENT:

J. H. PATTON, ESQ. *Judge*, AND G. LOCH, ESQ. *Officiating Judge.*

GOVERNMENT AND LALLA MEEAN

versus

SHIB MURRICK (No. 17,) GUNNESH MODEE (No. 18,) RAMA CHOWKEEDAR (No. 19,) MUNDIL ROY (No. 20,) KESHEE ROY (No. 21,) DHURONDHER ROY (No. 22,) DOOKHUN ROY (No. 23,) SOUMAN DURBEH* (No. 24,) and SHEWA CHUMAR* (No. 25.)

Bhaugulpore.

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Case of SHIB MURRICK and others.

Prisoners convicted of committing dacoity attended with murder and sentenced, one to death and the others to transportation for life.

CRIME CHARGED.—1st count, Nos. 17 and 18, dacoity attended with the murder of Haroo Myan and plunder of property valued at Rupees 24-6; 2nd count, Nos. 17 to 25, accomplices in the above crime; 3rd count, Nos. 17, 18, 20, 23, 24 and 25, knowingly possessing stolen property acquired by the dacoity.

Committing Officer.—Mr. G. C. G. Chapman, Deputy Magistrate with full powers of a Magistrate.

Tried before Mr. T. Sandys, Sessions Judge of Bhagulpore, on the 26th July, 1858

Remarks by the Sessions Judge.—Dacoits 15 to 20 in number attacked the prosecutor's house, on night of 4th June last, prosecutor and his two sons, youths above 20 years of age, the deceased and Shakkur (witness No. 1,) were sleeping in their court yard. The dacoits bound all three and Gunnesh prisoner No. 18, with a club commenced beating the deceased, who cried out, "I recognize you, and will have you apprehended to-morrow." On this Gunnesh called out to Shib Murrick prisoner No 17, the only one armed with a sword, to kill the deceased, which he did on the spot; and then the dacoits dispersed.

Lalla Meean Prosecutor,
Witness, No. 1, Shukkur Myan.
Witness, No. 2, Holas.

The mofussil inquest describes upwards of ten marks of blows on deceased's person, all club-blows except two on the head and face, which must have been severe. The body reached the station almost unfit for surgical examination, yet Baboo Dwarkanath Chatterjea, sub-assistant Surgeon, witness No. 12, observed "two incised wounds, one on scalp, other on the face. "No doubt they were severe cuts. No fracture, however, of "any of the bones; cannot distinctly state that these wounds

Witness, No. 8, Hemraj Modee.
" " 9, Nuthoo Modee.

* Acquitted by the Lower Court.

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"were the immediate cause of death, but there is every probability of their being so."

Wit. No. 2, Hoolas.
" " 3, Dulloo Meean.
" " 4, Manick Muhton.
" " 5, Jeebun.

The within witnesses, fellow residents of the same *tola* or hamlet where the prosecutor resides, depose to their having recognized the prisoners, residents of the neighbourhood amongst the dacoits as follows.

Shib Murrick, prisoner	No. 17.	Were recognized by Hoolas, witness No. 2.
Gunnesh, prisoner	No. 18.	
Dookhun, prisoner	No. 23.	
Shib Murrick, prisoner	No. 17.	Ditto by Dulloo Meean, witness No. 3.
Gunnesh, prisoner	No. 18.	
Rama, prisoner	No. 19.	
Mundil, prisoner	No. 20.	
Keshee, prisoner	No. 21.	Ditto by Manick Muhton, witness No. 4, and Jeebun, witness No. 5.
Dhurondher, prisoner	No. 22.	

Wit. No. 6, Bhatoo Meean.
" " 7, Etwaree.

Two others attending their cattle the same night, a mile distant from the prosecutor's, challenged and recognized a party passing along, who from the bundles they were carrying, as well as their saucy answers, and the occurrence of the dacoity, they concluded were the dacoits.

Shib Murrick, prisoner	No. 17.	Were recognized by Bhatoo Meean, witness No. 6, and
Gunnesh, prisoner	No. 18.	
Mundil, prisoner	No. 20.	
Dookhun, prisoner	No. 23.	
Gunnesh, prisoner	No. 18.	Ditto by Etwaree, witness No. 7.
Rama, prisoner	No. 19.	
Mundil, prisoner	No. 20.	
Dookhun, prisoner	No. 23.	

Wit. No. 8, Hemraj Modee.
" " 9, Nathoo Modee.
" " 14, Chotoo Meean.
" " 15, Ootim Meean.

On search of prisoners' houses, certain portions of the plundered property Nos. 1 to 23, inclusive, are said to have been recovered in the houses of Shib Murrick, prisoner No. 17, Gunnesh, prisoner No. 18, Mundil prisoner No. 20, Dookhun, prisoner, No 23, Soumon, prisoner No. 24, and Shewa, prisoner No. 25, as also a bloody sword in the thatch of Gunnesh, prisoner No. 18's dwelling.

The prisoners' defences have always consisted of simple denials, unable to account for any false accusation against them, though Gunnesh, prisoner No. 18, Rama, prisoner No. 19, and Mundil, prisoner No. 20, for the first time before this Court, set up lame and contradictory insinuations against the police. Gunnesh, however, has always denied the bloody sword and declared

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it to have been smuggled into the thatch of his house. Those, in whose houses the property was recovered, claim it as their own, but of the many witnesses cited by them, not one knows anything about it.

From the results under examination before this Court, I am obliged to regard this as a most unsatisfactory case. Not that it originates out of any malice or base purpose, of which it seems free, either on the part of prosecutor or the police, but out of the fancied requirements of our English Courts, which with the lax habits of the people, and police practices even more deteriorating, give rise to such dressings-up for the occasion, as leave a very narrow line between what is in reality malicious, or what is simply false. Any corroboration derivable from the recovery of the plundered property must be at once set aside as worthless. Prosecutor is said to go inside each prisoner's house and bring out the recovered property. About this he contradicts himself. He pretends he turned out every thing inside the houses, giving back the prisoners' properties, after having recognized his own, but he is quite unable to explain what he gave back, at the same time that any thing of the kind is adverse to the general tenor of the depositions, that prosecutor was the special finder in each instance. Neethoo Modee (witness No. 9,) says he does not know where the prosecutor found the articles, and Hemraj, witness No. 8, first prevaricated about it and then gave particulars self-contradictory. Hemraj, witness No. 8 says, each identical article was found quite exposed and not in any way concealed, whilst plaintiff pretends they were concealed. These three persons are not only contradictory of one another, but each of himself. The property may be the plaintiff's but I doubt the honesty of the search, which, I am of opinion, must have been got up for the occasion. Is it probable that murderers recognized and challenged at the time of the occurrence, would have thus left open proofs of their crime, carelessly scattered about their houses, in the shape of the plundered property? The direct evidence to the particulars of the murder are not also established in face of the positive contradictions and dogged silence of prosecutor, his son Shukkur, witness No. 1, and Hoolas, witness No. 2, to say nothing of their objectionable manner, especially witness No. 2's whilst under examination before this Court. Something of the kind very probably happened, but in the disturbance of the moment it was neither seen nor heard by them in the manner each narrates it. This too, has been dressed up for the occasion. Prosecutors' dwelling, map No. 48, forms a court-yard altogether open and enclosed to the north nearest to which is Hoolas, (witness No 2's) hut and between which and prosecutor's house there was a screen or "*jhattee ghooran*" of rude materials. The huts of the other witnesses are close by. Hoolas, witness No. 2, prevaricated about seeing

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and hearing what he narrates, whether from his hut or this screen. It was from behind this screen also that the other eye-witnesses saw what they depose to, but except Dulloo, witness No. 3, who pretends they all accompanied him in their flight thence, not one of the others see each other there! No specific conviction for murder against any of the prisoners in particular can rest on such evidence and this throws the case back solely on simpleproof of recognition of the dacoits during the attack. The superior Court usually regard such cases with disfavor, but, with all due deference, I beg to suggest that in this singular country, so much of it will often be the only true part of the prosecution in domestic district dacoities. In this instance, the dacoits were of the neighbourhood. Dacoity in these disturbed and famine-priced times have of late been prevalent throughout this district, for the slightest plunder, in the most barefaced manner, and have generally been followed by violence, where the slightest opposition has been shewn. I can discover no good reason in such a case for so many deposing to false recognition. The prosecutor from the first, on the 5th June, No. 8, named Shib Murrick, prisoner No. 17, Gunnesh, prisoner No. 18, and Rama, prisoner No. 19, and even Soumun, prisoner No. 24, and Shewa, prisoner No. 25. The neighbours, eye-witnesses, have always consistently named the prisoners, each say they recognized each, however differing from one another, as would most probably be the case during such a disturbance. In this way their depositions reach Shib Murrick, prisoner No. 17, as the only one armed with a sword and Gunnesh, prisoner No. 18, Rama, prisoner No. 19, Mundil, prisoner No. 20, Keshee, prisoner No. 21, Dhurondher, prisoner No. 22, and Dookhun, prisoner No. 23. Prosecutor and his son Shukkur, witness No. 1, state, for the first time, in the Sessions Court, that Shewa, prisoner No. 25, beat Shukkur, and Keshee, prisoner No. 21, Dhurondher, prisoner No. 23, and Dookhun, prisoner No. 24, the prosecutor, but such statement must be rejected as untimely and exaggerated. Thus viewed and with reference to the weakness of the defences, I convict all the following prisoners as accomplices in the dacoity attended with the murder of Haroo Myan, and would sentence Shib Murrick, prisoner No. 17, to imprisonment for life in transportation beyond sea and prisoners, Nos. 18 to 23, to fourteen years with labor and irons in banishment. I acquit Soumun, prisoner No. 24, and Shewa, prisoner No. 25, for want of proof of their guilt leaving it to the Magistrate to take security for their future conduct.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and G. Loch.) The evidence against the prisoners consists only of their recognition by the eye-witnesses; for we may put aside the evidence from the property alleged to have been plundered, found in the houses of some of the accused, as this

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proof is not insisted on by the Sessions Judge. Can then this evidence of the eye-witnesses be trusted? We think that under the circumstances of the case it can. The prosecutor and witnesses had no reason for charging the prisoners falsely. The prisoners themselves admit that they had no quarrel with the prosecutor or witnesses, and can assign no reason for being falsely accused. The light caused by the burning thatch was sufficient to enable the prosecutor to recognise the robbers, while the time occupied in tying the prosecutor and his sons, and in the assault on one of them, and in robbing the house, must have given them ample opportunity to recognise the accused. In the morning the prosecutor without delay proceeded to the thannah, and charged the prisoners, Shib Murrick, Gunnesh, Soumun, Durbah, Shewa Chamar and Rama and some others, with having committed the robbery and he deposed that some of the robbers, after having bound him and his sons, commenced beating his son, Haroo, who cried out, "I know you all and will have you apprehended to-morrow," on which Shib Murrick cut him down with a sword. The evidence of the prosecutor is supported by that of his son, Shunker, who omits the names of Soumun, Durbah and Shewa Chamar, but adds the name of Mundil. He also stated that at the instigation of Gunnesh, who was recognised by Haroo, Shib Murrick killed Haroo. We do not attach any credit to the evidence of Hoolas, witness No. 2, owing to the contradiction observable in his evidence to the Darogah and on the trial as to the place from which he saw the robbery committed; but we find no reason for rejecting the evidence of Dulloo, witness No. 3, who identified Shib Murrick, Gunnesh, Rama and Mundil, nor of the witnesses, Nos. 4 and 5, Manick and Jeebun who identified the prisoners, Keshee Roy and Dhuronder Roy, by the light of the burning thatch. Their evidence is consistent throughout and there is apparently no exaggeration.

The evidence of the witnesses, Bhatoo and Etwaree Nos. 6 and 7, need not be taken into account and it is not, in our opinion, satisfactory.

On the trial the prisoners deny the charge, but can assign no reason why they have been accused. Their witnesses prove nothing in their favour. We consider the 1st count of the charge fully proved against the prisoners, except Dookhun Roy, prisoner No. 23, who was not mentioned by the prosecutor, or his son, Shunker, in their first depositions to the Darogah; and who is implicated by the witnesses, Hoolas No. 2, Bhatoo No. 6, and Etwaree No. 7, whose evidence cannot, we think, be depended upon. It is proved by the evidence of the prosecutor and his son Shunker that the deceased Haroo was killed by the prisoner Shib Murrick, and it is added by Shunker that this was done by the orders of the prisoner, Gunnesh, in whose house a sword,

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marked with blood, was discovered. Prosecutor and Shunker on the trial both state that Shib Murrick committed the murder at the instigation of Gunnesh. The prosecutor, however, did not, in his first information at the thannah, state this; but merely mentioned Gunnesh as being among the other dacoits; and had he taken the prominent part afterwards described, we do not think the prosecutor could have forgotten or would have omitted to mention it. We therefore give him the benefit of the omission. We sentence the prisoner, Shib Murrick, to be hanged, as we think the evidence to his being the actual murderer, is conclusive; and we sentence the other prisoners, with the exception of Dookhun Roy, No. 23, to transportation for life with hard labour. Dookhun Roy we acquit.

PRESENT:

H. T. RAIKES, ESQ. *Judge*, AND C. B. TREVOR, ESQ., *Officiating Judge*.

TRIAL No. 1.

24-Pergunnahs.

GOVERNMENT AND RAMCOOMAR GHOSE MUNDLE

versus

1858. October 27. Case of CALIDOSS BANERJEA and others.

CALIDOSS BANNERJEA (No. 1,) RAJKISTO BANNERJEA (No. 2,) RAHEEM SHEIKH (No. 3,) PURBUTTYCHURN GHOSE (No. 4,) NOBINCHUNDER MITTER (No. 5,) RAMESWAR HALDAR (No. 6,) MADHUB SINGH JEMADAR (No. 7,) AND JUGGERNATH SINGH (No. 8)

TRIAL No. 2.

GOVERNMENT AND PETUMBER BURRAL

versus

CALIDOSS BANNERJEA (No. 1,) RAJKISTO BANNERJEA (No. 2,) RUHEEM SHEIKH (No. 3,) PURBUTTYCHURN GHOSE (No. 4,) NOBINCHUNDER MITTER (No. 5,) RAMESWAR HALDAR (No. 6,) MADHUB SINGH JEMADAR (No. 7,) AND JUGGERNATH SINGH (No. 8.)

Prisoners Nos. 3 to 8, were convicted by the Sessions Judge, of riotous assault with severe wounding and forcibly carrying away of Petumber Burral and also, of riotous assault and plunder of property and carrying away of Ramcoomar Mundle, and prisoners Nos.

Trial No. 1.—CRIME CHARGED.—1st count, defendants Nos. 3, 4, 5, 6, 7 and 8, riotous assault attended with severe wounding of the co-prosecutor Petumber Burral; 2nd count, defendants Nos. 3, 4, 5, 6, 7 and 8, forcibly carrying away (kidnapping) of the said co-prosecutor Petumber Burral; 3rd count, defendants Nos. 1 and 2, privity to the offences laid in the above two counts; 4th count, defendants Nos. 1 and 2,

false imprisonment of the said co-prosecutor from the 8th June, 1857, to the morning of the 7th July, 1858, corresponding with 27th Joistee 1264 to 14th Assar, 1265, B. S.; 5th count, defendants Nos. 1, 2, 3, 4, 5, 6, 7 and 8, privity to the above false imprisonment as laid in count 4th.

Trial No. 2.—CRIME CHARGED.—1st count, defendants Nos. 3, 4, 5, 6, 7 and 8, riotous assault and plunder of property valued at about Rs. 224-10 on the premises of the co-prosecutor, Ramcoomar Mundle; 2nd count, defendants Nos. 3, 4, 5, 6, 7 and 8, assault of the said co-prosecutor; 3rd count, defendants Nos. 3, 4, 5, 6, 7 and 8, forcibly carrying away (kidnapping) of the said co-prosecutor, Ramcoomar Mundle; 4th count, defendants Nos. 1 and 2, privity to the offences laid in the above 2 counts; 5th count, defendants Nos. 1 and 2, false imprisonment of the said co-prosecutor, Ramcoomar Mundle.

Trial No. 1.—CRIME ESTABLISHED.—Defendants Nos. 1 and 2, privity to riotous assault attended with severe wounding and forcibly carrying away (kidnapping) and false imprisonment of the co-prosecutor, Petumber Burral. Defendants Nos 3 to 8, riotous assault with severe wounding and forcibly carrying away (kidnapping) of the prosecutor, Petumber Burral.

Trial No. 2.—CRIME ESTABLISHED.—Nos. 1 and 2, privity to riotous assault and plunder of property and forcibly carrying away (kidnapping) and false imprisonment of the co-prosecutor, Ramcoomar Mundle; Nos. 3 to 8, riotous assault and plunder of property and forcibly carrying away (kidnapping) of the prosecutor, Ramcoomar Mundle, &c.

Committing Officer.—Mr. J. J. Grey, Magistrate of Howrah.

Tried before Mr. E. Lautour, Sessions Judge of 24-Pergunnahs, on the 28th August, 1858.

Trial No. 1.—*Remarks by the Sessions Judge.*—This case is common in its origin to cases, calendar No. 1, and calendar No. 3.

On the night of the 27th Jeyt, 1264, 8th June, 1857, at about 2 A. M., the village of Nurna, where the three prosecutors reside, was entered by the gomastahs and servants of the zemindars of Telinaparah (prisoners Nos. 1 and 2,) the houses of Ramcoomar and Ramkishore Sorkel, were forced open; that of this prosecutor entered and he was forcibly kidnapped and no traces could be found of him, until his release by the Magistrate of Howrah on the 7th of July, 1858, he being then in confinement in the house of Calidoss No. 1, and Rajkishore No. 2, at Telinaparah.

It appears, that for some time previous to this very gross outrage, there had been considerable misunderstanding between the ryots and the zemindars owing to the latter wishing to measure the lands with a short line, below the standard *cottah*, and to which the whole of the ryots or the greater

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1 and 2, were convicted of being privy to the above crimes and also with the illegal imprisonment of Petumber Burral. The former prisoners were sentenced to 7 years' imprisonment with hard labor and irons. The prisoner No. 1, to 7 years' imprisonment with labor and irons and prisoner No. 2 to 2 years' imprisonment with labor commutable on the payment of a fine of 1000 Rs. within one week.

Held on appeal, that no reason exists for interfering with the sentence passed by the Sessions Judge against the prisoners Nos. 3 to 8.

Held that privity to a misdemeanor not being a criminal offence even if it had been proved,

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which is not the case against the prisoners Nos. 1 and 2, they would not have been liable to punishment on that account.

Held also that prisoners Nos. 1 and 2, are clearly guilty of the illegal imprisonment of the prosecutors.

Prisoner No. 1, is therefore in modification of the Sessions Judge's order, sentenced to imprisonment for three years with labor commutable to payment of a fine of Rs.3000 and prisoner No. 2 to six months' imprisonment with labor commutable by the payment of a fine of 250 Rs.

part of them, were naturally opposed as the loss to the latter would have been four or five *cottahs* in the *beegah* or twenty or twenty-five per cent. the difference between the Collector's standard and the zemindar's. On the night in question, at about 2 A. M. the village was entered by the gomastahs and other agents of the zemindar's. The prosecutor was violently abducted; on the road, he was most severely wounded and beaten, by the order of the defendants Nos. 3 to 6 and carried to the house of the prisoners Nos. 1 and 2, at Telinaparah, where he was taken to the *Boituck Khanah* and found the prosecutor, Calendar No. 3, who had been previously carried there. To explain the extent of that outrage, I must here mention that his house was violently broken into, and there is no reason whatever for disbelieving the statement, that his female relatives were one and all robbed of their ornaments, and I am afraid that his daughter Luckimoney, who was bitten on the cheek, by one of these hireling ruffians, was still worse treated, a fact suppressed by the parties, out of consideration of the family honor.

Ramtaruck, the son of the prosecutor Petumber Burral, proceeded to the Magistrate's Court on the 28th and lodged a petition complaining of the abduction of his father. A similar petition was preferred on the same day, by Rubheram Ghose, the son of Ramcoomar, the other prosecutor, who had been kidnapped, and a further petition was presented by Ramkishore Sorkel, who had his house similarly broken into and plundered and who, after being slightly wounded, had succeeded in effecting his escape into adjacent jungle.

To meet these petitions, counter-petitions were put in by the zemindar's people on the same date 28th Jeyt, 1264, one by Goburdhon; another by Parbuttychurn; another by Muddoosoodun. The former accuses the ryots of having in a body attacked his house, on the night of the 27th, robbed him of 17 Rupees, his collections, which he had received, but not paid into the cutcherry, of which he is a *malpaik;* that his house had been violently broken open and himself severely beaten.

All these petitions were referred to the Darogah of Domjore, to report upon. Those put in by the zemindar's people were reported to be entirely false and in his report of the 21st of June, referring to the measurement disputes, the Darogah goes on to state, that prisoner No. 3, Ruheem Sheikh, gomastah, and prisoner No. 5, Nobeenchunder Mitter and others came with a body of *Lattyals* at 3 A. M. kidnapped Rubeeram's father, Ramcoomar, plundered the women of their ornaments and committed great oppression and under pretext of a summary writ, had cruelly wounded and kidnapped Pittumber Bural and further wounded Ramkishore Sorkel, and that the villagers were much downcast and suggests that the zemindars and

their agents should be bound down to keep the peace, as well as the ryots, and that the jemadar and two burkundazes should be stationed there to arrest all parties armed, and that no trace of Ramcoomar could be found, and that as to Pittumber Bural, kidnapped under a false process under Regulation VII. 1799, he had not been rendered at Hooghly, and accordingly he had sent a note by a burkundaze to the Darogah of Bedepattee, these parties having been carried off to Telinaparah.

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On the 24th of June, the zemindars, prisoners Nos. 1 and 2, impeach this report, accusing the ryots of combination, active opposition and maintaining, that the three actions were anticipatory and fraudulent, and that the Darogah had postponed a final report, out of collusion with the ryots and this petition begs that an independent Darogah be sent, suggesting the Rajapore Darogah, and further that the Magistrate should himself go to the spot and enquire into the case.

The son of the prosecutor, Pittumber, proceeded to Hooghly and petitioned the Collector, setting forth the facts; he was referred to the Magistrate and his petition, after registering the number, was returned to him, for that purpose. This is filed with a separate petition detailing the outrages, and states that the results of his enquiry at Hooghly, was, that Sheikh Jurun pyadah, had put in a false return to the writ, viz. that his father was concealed; but the fact was, that dead or alive he had been taken to Telinaparah and concealed there. From that petition, it would appear that summary suit No. 429 for an alleged arrear of Rupees 8-14-2-2, had been preferred against his father and 427-428-431 and 432, had been preferred against other ryots and fellow villagers.

The Darogah submits his final report on the 25th June, reciting the evidence recorded, he finds that it was perfectly true that Ramcoomar Mundul was kidnapped and forcibly taken out of his house by Raheem Sheikh and Nubeenchunder and Ramessur Holdar and Parbuttychurn Ghose, gomastahs of prisoner No. 1, Calidoss and prisoner No. 2, Rajkissun, who attacked the village in company with prisoner No. 7, Madhab Singh, jemadar, Bowany Misser, prisoner No. 8, Juggernath Sobheeraj Singh and Gorachand Bagdie and some twenty or thirty *lattyals;* that the house of Jadob, was forcibly broken into and the women robbed of their ornaments as per list; that Ramcoomar's house was similarly broken into and the *pittarah* and chest broken open and robbed and twenty-one articles as per inventory, were carried off and his female relatives were similarly plundered of their jewels and ornaments; that his daughter was injured on the cheek and her ornaments all plundered; that she was ashamed to say how that was done, but it had been bitten and an attempt at least was made to

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violate her person. Upon this, an order was passed "*Shamil Misl.*"

The evidence recorded fully supported the Darogah's reports. It would be perhaps useless to detail it at length. The defendants denied the charges and set up in defence the combination of the ryots against their zemindars and consequent falsity of the accusation, pleas systematically supported by the zemindars themselves, in separate petitions and kyfeuts, put in at different times.

Ramcoomar made his appearance about six weeks after his abduction, having been brought down to Howrah, to give in a *razeenamah* by the zemindar's people.

The Magistrate, completely puzzled, between the conflicting statements of the ryots on one side and the zemindar's people on the other, shelved the case, reserving his power to deal with it, should Pittumber Bural be forthcoming, of whose murder very grave doubts were entertained and recognizances were taken from the ryots and the zemindars, an order against which an appeal was preferred to me by the ryots. The orders of the Magistrate were set aside and the case being so fully established by the Police reports and evidence, I could not but express my opinion at the feeble proceeding of the Magistrate, in conducting his enquiry into this very grave outrage. A copy of my proceedings is annexed.* I feel that had the Magistrate on the police reports and evidence and upon the petitions presented to him being so completely verified, availed himself of his powers, under Section 3, Regulation IX. 1807, and forthwith arrested these zemindars and refused bail, on the presumption of murder, until Pittumber Boral was produced; the case would never have been so mistakingly conducted and the unfortunate victim would never have been shut up for fourteen months, in the zemindar's house, in defiance of all constituted authority. The prosecutor's statement in this Court corresponds with that taken before the Magistrate on his rescue. It is voluminous and therefore it will be sufficient, if I make a mere abstract in this place. Mr. Grey's translation is on the record stating, how he and his son were sleeping in their dwelling-house on the night of the 8th of June, which was moonlight, he was aroused by a great noise on the east side of his house and went out, telling his son Ramtaruck to remain. He stood outside in the path when he met Meajan Chowkeedar (dead last September,) who told him that the zemindar's people had come down on the eastern *pará* or quarter, and were plundering and seizing the people, when Thakoordoss and Luckinarain and Motelall and Gorachand and Mudoosoodun entered his house and said, this is Pittumber Bural, who was then seized by the *lattials*, who were in Puran Mundul's house. He was taken as far as Ram-

* Vide appendix.

chunder's house when other thirty or thirty-two men came from Ramkishore Sorkel's (prosecutor, calendar No. 1.) It was settled to lock him up in prisoner No. 3, Ruheem Sheikh's house, where the said Ramcoomar already was; but he said he would rather be killed than go there. To this it was replied, if you are murdered it is only to a zemindar, a matter of a fine of 2000 or 5000 rupees or two years' or five years' imprisonment. That as for them, when they took zemindary service, they did so, putting one foot in jail and the other in their master's service. Upon his refusing to go, prisoner No. 3, Ruheem Sheikh, prisoner No. 6, Ramessur, prisoner No. 5, Nobeen and prisoner No. 4, Parbutty, Puran, and Nuffer Dutt, said as he would not go like a gentleman to take him as they could, upon which, prisoner No. 8, Juggernath, struck him with a hatchet and prisoner No. 7, Madhub Singh Jemadar with a sword, inflicting two wounds on his forehead, and Suberaz struck him a blow on the crown of his head with a *lattee* and others struck him in various places about the body, the marks of which are extant. In fine he fell down senseless. He was removed to Khanpore, to the house of one Bonomali, who objecting to receive the body of a murdered man, suggested to take the prosecutor to the house of Bajoo, where there were no females, which was done at 7 A. M. Prisoner No. 3, Ruheem Sheikh and prisoner No. 7, Madhub Singh asked him if he could walk and Bonomali Kubelosoe Hullodhur, Madhub Singh lifted him in a sitting posture. Madhub prisoner No. 7, said, You are shamming, and he would heat a *hookah*-cleaner wire and introduce it into his *anus*. In fine they lifted him and carried him off to Telinaparah, a foot occasionally touching the ground. There he arrived about 4 P. M. and was taken to the zemindar's *boitukhana*, where he saw Ramcoomar on the *toshakhanna* sitting with his head resting on his knees.

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The zemindar Calidoss, prisoner No. 1, asked if he had taken food and enquired how he had been seized. The same night at 3 A. M. he was carried away to the house of Sheebchunder at Manicknuggur with Ramcoomar. Thence after ten or twelve days, they were removed to Deenoo Doctor's house in Chandernagore in the carriage of Calidoss, prisoner No. 1, accompanied by Deenoo Baboo and attended by *lattyals* (named in the deposition). He wanted seven rupees a month for house-hire, which was objected to, and after one day and a night, they were removed to a *pan* garden at Manicknuggur, where they were kept during the day, and removed into the house of Sheebchunder at night. The owners of the *pan* garden were an uncle and nephew, names unknown, the former a leper; the latter lame at the hip-joint. At this time he was ill nine days of fever. About this time proposals were

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made to hush up the matter, pursuant to which, Ramcoomar was sent into Howrah, in charge of the zemindar's people to give a *razeenamah*, which he repudiated in the Magistrate's Court (particulars will be entered on that trial). After this, the prosecutor was more severely dealt with and taken away to the *zenana* at Sheebchunder's and placed in the furthest of the twenty-six rooms, in which there was chandeliers, glass, lamps, &c. and after nine days he was removed again to Telinaparah. When the Serampore Magistrate was snipe-shooting, in the neighbourhood, he was concealed in a hollow in the privy and also when he came there to make some road enquiries and when the Darogah of Bedebattee went there with a note in Persian to get read. Proposals were made to settle the case. His son was offered 200 Rs. (by parties named in deposition.) Similar tenders were made to the prosecutor of land or money; to which he replied, What you give to-day you will snatch back to-morrow. Then it was proposed that he should allow himself to be taken in a shop at Gwaree, under a fictitious summary writ, and be delivered up in this way, and it was again proposed, when they would not trust him in that arrangement, to have the prosecutor arrested at Chandernagore, as a thief and imprisoned, when the case would be struck off the file and the zemindar's people went off to Hooghly to arrange this, Kanaye Mookerjea a Brahmin, and a practiced hand at Chandernagore, having been sent for to arrange this, to which he had consented, but the *mokhtears* at Hooghly objected, that, in consequence of the action having been instituted by the prosecutor's son, the trick would transpire. Then it was proposed to set him at liberty in his village, but the case having been sent back, it was urged the charge would be at once proved.

Then he was put in a boat and taken to Sooksagar and brought back to Telinaparah, when he was found by the Magistrate who laid hold of one arm as he was being dragged out of the room by his guards, by the other door. This will be better detailed, when the evidence of the Magistrate comes under review.

The Darogah of Dumjore who conducted the enquiry into this case was sent for and examined, he had no doubt whatever of the abduction of the two kidnapped men, Pittumber Bural and Ramcoomar and the plunder of Ramcoomar's house and his women's ornaments, or that the wound on the cheek of his daughter was from a bite and not from the blow of a stick was obvious from its circular form, leaving the centre untouched. He also says there was some report of a process being out under Regulation VII. 1791, with a pyadah.

Case 429 referred to in the petition presented by the son of the prosecutor was sent for by this Court. I find that five days

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before this outrage or on the 22nd Jhet, 1264, or 3rd June, 1857, prisoner No. 1, Calidoss put in a petition applying for a writ, against Pittumber Bural, for an alleged arrear of Rs. 8, a. 14, g. 2, c. 2. I make little doubt but that the original design under color of that process issued 23rd Jhet, or 4th June, was to have him arrested, a means of annoyance generally resorted to by zemindars with more or less success, in consequence of collectors forgetting that the law authorizes *no* process against the person, to recover any arrear, that can be realized by distraint of the property of a defaulter, which is a positive condition precedent, to process against the person (Section 15, Clause 1, Regulation VII. 1799.) This prosecutor could not very readily be produced in the Hooghly Court, with two ghastly wounds on his forehead and the crown of his head cut open, and hence it was necessary to carry him off to the zemindar's cutcherry and the pyadah gives in a return, that he is concealed and the process cannot be served. Another application is made for the re-issue of process on the 31st Jhet, 1264, or 12th June, 1857, which was re-issued on 20th June, and a further return that the party was concealed, is put in 6th July, and eventually after application for proclamation and petition to summon witnesses and taking their depositions on the 24th July, 1857, a decree *ex-parte* is passed against the prosecutor on the 6th of November, idem, followed by execution on the 7th December, idem, at the very time, that he is actually in the custody of the plaintiff Calidoss in his own house.

Wit. No. 1, Bhootnath Ghose.

States that prisoner No. 3, Ruheem Sheikh, prisoner No. 5, Nobin Mitter, prisoner No. 8, Juggernath and prisoner No. 7, Madhub about fourteen months ago, at 3 A. M. attacked the village of Nurna and carried off the prosecutor; they were accompanied by a gang of some thirty or forty men. That prisoner No. 8, Juggernath and prisoner No. 7, Madhub Singh beat him, the former with a *tangee* or hatchet, others with *latties*, prisoner No. 3, Ruheem Sheikh and prisoner No. 5, Nobin Mitter gave the orders. Has known the prosecutor for years, living in the same village and he had no scars of wounds prior to this, did not see him again until after his release in Assar last (1265,) or June, July (1858).

Wit. No. 2, Nubail Ghose.

To the same facts; names prisoner No. 4, Parbutty Ghose, Prisoner No. 3, Ruheem Sheikh, prisoner No. 5, Nobin Mitter, prisoner No. 6, Rameswar Haldar, as giving the orders and prisoner No. 8, Juggernath Singh and prisoner No. 9, Madhub Singh as beating and wounding the prosecutor. The former with a hatchet, the latter with a *lattee* as also Bowany Misser; speaks to another set of men, coming from Ramkishore Surkel's; states to seeing the prosecutor wounded and lying on the ground

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and how he was carried off to Khanpore, by the abovenamed parties, from which date until after his release, he never saw him. He had no scars of wounds prior to this.

Wit. No. 3, Sreemunto Ghose. To the above effect to the seizure of the prosecutor. He states that prisoner No. 8, Juggernath Singh, struck him with a stick and prisoner No. 7, Madhub Jemadar with a stick. This witness affects to forget the evidence he gave in the Magistrate's Court in criminating the zemindar's men as that had been taken so long ago, but the real cause is probably to be found in the presence of his zemindars and their amlah at the bar, or to having been bought over out of Court.

Wit. No. 7, Rugowan Ghose. Speaks to being roused by the chowkeedar Meajan, at night in consequence of the uproar going on in the eastern quarter of the village. Saw the prosecutor in charge of ten or twelve men, he was being taken in an easterly direction, followed in company with witness No. 3, Sreemunto Ghose at the Sheebtollah, the others from Ramkishore Surkels joined. There were some forty, when the prosecutor was beaten by orders of prisoner No. 4, Parbutty Prisoner No. 3, Ruheem, prisoner No. 6, Ramessur, prisoner No. 5, Nobin, prisoner No. 8, Juggernath striking him with a hatchet, when he fell and several others beat him, who could not not be distinguished in the melee. Some said, He is dead get rid of the body ; and others said, carry it away ; when he was carried off in the direction of Khanpore and until his release by the Magistrate in Assar 1265, he never met him again. Prior to this he had no scars on his person.

Wit. No. 17, Ramtaruck Burral. Son of the prosecutor, speaks to being asleep in his father's house ; to the latter getting up to go and see what the uproar was about ; to remaining in the house by his father's orders and going to sleep again ; to looking after his father next morning ; to asking different people, Bugwan, Sreenath, &c. as to what had become of him ; to their telling him he had been carried off by the zemindar's people ; to petitioning the Magistrate that day ; to proceeding to Hooghly to the Collector's Court, and petitioning him ; to his father not being confined there ; to his father's being absent from that night until his release by the Magistrate, and to his not having any scars or wounds previously.

Wit. No. 17½, Ramcoomar Ghose. Details the attack in the village, is directed to reserve matters peculiar to his own case, till that comes on for trial ; states that he was carried off to Telinaparah by the zemindar's gomastah, prisoner No. 3, Ruheem Sheikh, prisoner No. 5, Nobeen, prisoner No. 6, Rammessur, prisoner No. 4, Parbutty, prisoner No. 8, Juggernath Singh, Bowany Misser, No. 7, Madhub Singh,

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Subberany Singh and a great many others, who had attacked and plundered his house, &c. He was first conveyed to prisoner No. 3, Ruheem Sheikh's house at Khanpore and thence to Telinaparah, where he arrived at 1½ P. M. having been carried across the *maidans* ; he was placed in the *tosahkhannah* ; later in the afternoon the prosecutor was taken there, and put in the *boytuckkhannah* upstairs, at 3 A. M. they were both taken to Manicknuggur to Ramdhone Baboo's. The prosecutor's head was bandaged; the wounds were still bleeding. They were shut up in an upper room, four men were in charge; of whom, knew, Subbeeraj. When there some one, Darogah or other person, called them both by names, but the guards and prisoner No. 7, Madhub Singh threatened to murder him, if they answered, so they remained silent, and two days after this, prisoner No. 1, Callidoss Baboo, sent his *garee* with Deenoo Baboo and they were taken to Deenoo Doctor's at Chandernagore, a medical attendant of the Baboo's; there was some chaffering about house-rent and the terms not being accepted, they were removed next day to a *pan* garden, at Munkoonda, twenty or thirty *russees* distant, from Manicknuggur, where they were kept during the day, and taken to Manicknuggur at night, where they were confined in a room, in the third story. Was thence taken to Telinaparah and the zemindar and his people talked him into giving a *razeenamah* and took him in a boat to Howrah, where he detailed the circumstances to the Magistrate and petitioned that the case might go on. This petition, 13th July, 1857, details the fact of Pittumber Bural being in confinement at Telinaparah ; in cross-examination, states that whilst at Manicknuggur Pittumber was ill of ague. That prisoner No. 7, Madhub Singh attended to his wounds, as if they remained, they would all certainly be punished.

Wit. No. 18, Ramkishore Surkel.

Points out, prisoner No. 3, Ruheem Sheikh, prisoner No. 5, Nobeen Mitter, prisoner No. 6, Ramessur Holdar, prisoner No. 4, Parbuttychurn Ghose, prisoner No. 7, Madhub Singh, prisoner No. 8, Juggernath Singh, in court and names Poran Ghose the father of Parbuttychurn and Nuffur Dutt, as attacking the village with forty or fifty of their followers, plundering his house and wounding him ; he is directed to reserve particulars personal to himself to his future deposition in his own case; he proceeds to say, how he heard of the abduction of the prosecutor, from Ramtaruck his son, who had gone to the Magistrate's Court at Howrah, to petition on that account ; did not see him subsequently until his rescue and release by the Magistrate on the 8th of July last. This witness having prosecuted in his own case, when the Magistrate did nothing, appealed ; he was subsequently engaged, after the remand, in tracing the prosecutor, obtained a clue from a brahmin of Pataru village, that he

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was in confinement at Telinaparah; informed the Sulkeah Darogah and the Magistrate, and under the Magistrate's order proceeded to Serampore with the Darogah and others, and thence went to the Telinaparah neighbourhood to a *ghat*, proceeded to the house with the authorities. A woman came out of the principal gateway and seeing them, ran back, upon which, this witness urged the expediency of promptitude, and followed by the Magistrate, passed through the first door, encountered prisoner No. 7, Madhub Singh and his brother Subheeraj and two other guards. They attempted to resist, but were warned that it was the authorities, left that enclosure and went on to another opposite the *poojah dulan* where the guard was asleep within musquitoe curtains, who awoke hearing footsteps and got up and looked out and jumped out into the western room, and deponent told the Magistrate to be quick, as that was the place where the prosecutor was confined, and that he would be carried off; so they followed in sharp, and as the prosecutor was being dragged through a door-way, deponent and the Magistrate seized him by the other arm and the two guards made their escape; has known the prosecutor a long time, never had any wounds or scars on him previously. He was in a pitiable condition and much wasted when rescued, the colour of a goose's egg or a hen's egg and looking so fallen away (*mulin*) that in another month he would probably have died.

The counsel for prisoners was requested to confine his cross-examination to the points to which evidence had been given. After considerable time had been wasted in questions wholly without materiality, the testimony of the witness was not shaken in any respect.

Wit. No. 8, Bungshi Mullick.

Deposes to seeing the prosecutor carried away wounded to Bonomali's house.

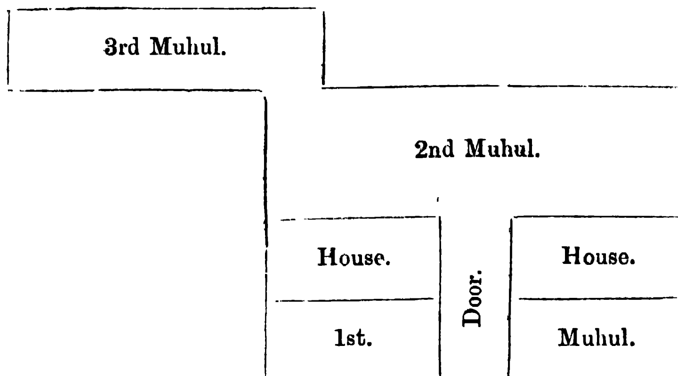
Witness No. 21, Baboo Kistochunder Dutt, 1st grade Darogah, thannah Sulkea.

Speaks to the arrangements made for the rescue of the prosecutor, and proceeding with the Magistrates of Howrah and Serampore to Telinaparah, where he was rescued in the third Muhul. He is asked to explain the position by a diagram from memory, which he does.

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Main Gateway.

His position was in the 2nd Muhul, that of the Serampore Magistrate at the gateway, the Magistrate of Howrah and Ramkishore went into the third Muhul, from which, in three minutes, he returned with the prosecutor. He is now a very different person to what he was when released, then he was very white and much out of condition. Is cross-examined upon most immaterial points, without avail; is asked by the Court, if Pittumber Bural could have been introduced surreptitiously into the 2nd Muhul, where his position was, replies, No, as there were some twenty-five *durwans* in the first Muhul, and necessarily introduction into the 3rd Muhul would be still less practicable.

Wit. No. 15, Bhuggobutty Churn.

Knew the prosecutor some five or seven years ago, he used to practice medicine at Telinaparah. Saw him four or five days previously to his release in the *Poojah Dulan*. In cross-examination he says he looked like the prosecutor. That it was dark. That there was no guard in the *Poojah Dulan*. Is asked by the Court how he himself gets to the *Poojah Dulan* in the 3rd Muhul, replies viâ the sudder gateway. The Durwans are stationed in the 1st Muhul (vide diagram supra.)

Wit. No. 14, Goolgar Dholea.

Is asked, do you know this individual, pointing to the prosecutor, No, never saw him at Telinaparah. (In the Magistrate's Court he stated he was confined there, that he had seen him at the *Sunkrath Poojah* in Jhet.) Is asked, if he did not come to Howrah with him and the Magistrate. He says, Pittumber Bural came in the Magistrate's boat. He, in the Darogah's. Is asked, if he did not give his evidence in presence of Pittumber Bural in the Magistrate's Court, admits that he did; is

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again asked who that individual is and says Pittumber Bural. Endeavours to explain away his evidence before the Magistrate as having been given in a hypothetical sense.

Witnesses Nos. 9,* 10† and 11,‡ unnecessary, ditto No. 13§ and No. 16|| absent. The former two speak to seeing the prisoner there from September till his release. The latter, to seeing him there for some three or four months prior to his release. These two witnesses are persons under the control of the prisoners Nos. 1 and 2. The latter is Jemadar of the prisoner Callidoss. The former more immediately is in service with the prisoner's co-partners and relations. These witnesses were taken by the Magistrate from the prisoner's house at Telinaparah, and it was my intention to have made them evidence in the case as is the rule, where the absence of the witnesses is procured by the defendants, but the Magistrate made the mistake of not taking their evidence in the presence of the defendants or their attornies, and the prosecution loses the benefit of very important evidence which would have been used against the prisoners, on its being shewn that they had caused their non-attendance, a fact in itself presumable from the relative position of servant and master.

* No. 9, Rambhuddur Mundul.

† No. 10, Nuffur Mullick.

‡ No. 11, Buggowan Poramanick.

§ No. 13, Hullodhur Roy.

|| No. 16, Bechoo Aubustee.

Inspector Howrah Police, witness No. 20, Mr. W. Wale.

This witness deposes to accompanying the Magistrates of Howrah and Serampore, to entering with them and following the Magistrate of Howrah up to the room where prisoner was released. His evidence is recorded in English. He states that the condition of the prosecutor was pitiable in extreme. He was very talkative, and very dirty and wasted. Is asked by Mr. Newmarch if he had the appearance of having recently bathed, says that he appeared not to have bathed for twelve months, and as to whether his appearance resulted in illness, says his only illness was hunger; that he was constantly asking for food and as to his talkativeness, that from overjoy at being released there was no keeping his tongue quiet. That he is not the same man now, he is so much improved, and as to the possibility of introducing him surreptitiously with reference to the height of the walls and the number of the Durwans, that a cat could not get in without their knowing it.

Witness No. 19, Mr. J. J. Grey, Magistrate of Howrah.

Speaks to the circumstances of the recovery of the prosecutor. Detailing the particulars given elsewhere, he was guided by Ramkishore Surkel and the

Magistrate ran in advance into the second apartment, where Rajkishore passed him and on to the *Poojah Dulan* which was entered by Ramkishore who laid hands on the prosecutor and made him over to the Magistrate at the door; they were close together and the Magistrate mentions that the string of musquitoe curtains stretched in front of the door caught him round the neck. The Magistrate also states as to filthy appearance of his bedding and Brahminical thread and his extreme talkativeness from overjoy, his prayer and his anxiety to go to his home and village, this evidence in *extenso* is in English and may be referred to.

Wit. No. 22, Dr. C.Palmer, Civil Assistant Surgeon.

Examined the prosecutor, at request of the Magistrate of Howrah; deposes to his prostrate condition, which he attributes to the causes assigned by the prosecutor, long confinement and inadequate food, the wounds of which the scars remain, must have been deep and down to the scull; cannot say how long they may have been inflicted; the skin and tongue gave no indications of disease; a person convalescing might, as to skin and pulse, exhibit similar appearance; the man is quite a different being now to what he was then.

The prisoners Nos. 1 to 8, plead *not guilty*. Prisoners Nos. 1 and 2, put in written pleas through their counsel, denying the fact of the occurrence on the 27th of Jyet, 1264, and all the counts.

* Ruheem Sheikh.

The prisoner No. 3,* pleads, that he was too ill to attend to his duties at that time and for two years his office of gomastah had been performed by one Haroo, but the zemindars, prisoners Nos. 1 and 2, in their petition to the Magistrate 7th Bhadon, 1264, refer to the petition of this very gomastah as referred to the Darogah to report upon, ending in the *kyfeut* of the mohurir of Dumjore, dated 29th March, 1857.

Parbuttychurn, prisoner No. 4.—Attributes this as well as other cases to the combination of the ryots generally and more particularly to the instigation of the prosecutor No. 1, Ramkishore Surkel.

Nobinchunder, prisoner No. 5.—*Alibi*, being from 22nd of Jyet, till 10 P. M. of the 27th rendering his accounts at Telinaparah, returning on the 28th to Khanpore.

Rameswar Haldar, prisoner No. 6.—*Alibi* at Telinaparah from the 25th of Jyet till the 28th.

Madhob Singh, prisoner No. 7.—Attributes the action to the ill-feeling arising out of the measurement disputes. States that several of the ryots owe him money, his imprisonment will act as a sponge to these debts.

Juggernath Singh, prisoner No. 8.—*Alibi* at his uncle's Roga-

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bere Singh, who is in the employment of a Baboo Bannerjee at Balee.

The first witness examined for the prisoners Nos. 1 and 2, is Susteechurn No. 27, for eighteen years a servant with the Baboos. Speaks to their absence at Mirzapore in the house of their co-partner Anodapershaud at Mirzapore, Calcutta, on the 24th and 25th of Assar; never saw the prosecutor during the alleged time of his detention or heard of his being there; speaks to dispute amongst the co-partners; details particulars as to the *poojah dalan*, the situation of the premises, that there are three entrances to it. Denies writing any letter for Ramcoomar; states that the sudder gate is open all night long.

In answer to the Court.—Is unable to state that there have been or are any cases whatever or arbitrations between the co-partners, and does not recollect whether he has given any evidence in any Court previously to this accusation, in the Magistrate's Court at Howrah and Sessions Court.

Wit. No. 28, Rotunmohun Banerjea.

Treasurer of the Baboo Calidoss prisoner No. 1, speaks to the Baboos going to Calcutta on the 24th of Assar; to his following on the 25th idem; speaks to the same facts as to the *poojah dalan* and the time of service, with reference to the joint proprietors, to the *antetechala* or place for reception of guests. That the sudder gate is open all night.

By the Court.—Is asked if he ever knew any other house with the sudder gate open all night, explains that this is for convenience of travellers; are no risks run by travellers of being robbed? or the house plundered? replies, that all the malkhanas are guarded and travellers must look out for themselves; as to disputes, eighteen or nineteen years ago and sixteen years ago there were two cases. All the co-partners entertain and visit each other.

Wit. No. 30, Shamachurn Mookerjea.

Is purveyor in the employment of Anodapershad whose term of performance it was. On the night of the 24th Jyet Mohes Mookerjea of Bejatee Palara was a guest, another person came subsequently about 8 or 9 P. M. That the door of the "*bhojen*" house is always open (this is a room entering into the *poojah dalan* or attached to and is spoken to by the preceding witnesses, this is the room where the prosecutor was recovered.)

By the Court.—Where is the store-house? At the *phattuck khanah* Mehal within the main gateway, through which these parties must have entered to come to him.

Wit. No. 26, Manohur Kubceraaj.

Family physician of the zemindar's; never attended or saw the prosecutor, during the time of alleged captivity at Telinaparah.

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Wit. No. 35, Gobind Chowkeedar.

Went to the premises with jemadar and burkundaz to call the prosecutor if he were in confinement. Did so, some six or seven times, states that no search was made of the rooms and that the sudder or main door is open at night.

Witness No. 32, Ruheem Khan, Police Jemadar.

The same in answer to a question as to whether he accompanied the Magistrate of Serampore, says "*the sudder door is open all night.*"

Wit. No. 30, Ramcoomar Holdar.

Is a mohurir in the employment of prisoner No. 2, Rajkishen. Did not see the prosecutor at Telinaparah within the period of the alleged confinement; heard that the Magistrate had apprehended an *otete* or guest there, there are quarrels between the co-partners about a *poolbundee.* By the Court, cannot say when that case occurred.

Wit. No. 29, Dinnonath Mookerjea.

Servant as above, has been his moonshee for ten years, denies removing the prosecutor in the carriage of prisoner No. 1, Calidoss to Deenoo Doctors at Chandernagore; prisoner No. 1, Calidoss, had no carriage then; bought a new carriage three months ago. *By the Court;* he never hired carriages, always goes by water to the Railway Station; he has only one horse; his present carriage is a one horse-carriage; he always travels in a palanquin, when he goes in land, prisoner No. 2, Rajkishun has no carriage at all, Imam Buxsh is the name of prisoner No. 1, Calidoss's coachman; cannot say who built his new carriage (Mr. Newmarch offers to put in the bill of Seton and Company).

The evidence of Moheshchunder Mookerjea witness No. 34, ill of cholera and incapacitated from attending, is read in Court and admitted as evidence in this Court. States that he was a guest on the 24th Assar; that there was one other guest that night; that he did not identify that individual; that he was the owner of the musquitoe curtains stretched across the door; that two sahibs came, upon which he ran in.

Wit. No. 33, Deenonath, Doctor.

This individual (having broken his leg) is certified as too ill to travel, his deposition recorded before the Magistrate is read as evidence in the case. States that the prosecutor was never brought to him to doctor by Deenoo Baboo.

Here Mr. Newmarch represents to the Court that on his advice, the prisoners will not support the petition tendered by them, as to the place where the prisoner was alleged by them to have been concealed.

Memorandum of the previous conviction of prisoner No. 3,

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Ruheem Sheikh and prisoner No. 6, Rammessur Holdar and prisoner No. 8, Juggernath Singh, 14th May, 1849, is put in. Imprisonment for three months with fine for assault.

Prisoner No. 3, *Ruheem Sheikh.*—Examines five witnesses to prove that he was incapacitated by illness for two years, witnesses Nos. 7 to 11, both inclusive. They depose that he has been ill with dysentery up to the present date, these people are not any of them professional persons but ordinary ryots.

Prisoner No. 4, *Parbuttychurn Ghose*—Rumjan Burkundaz witness No. 12, speaks to being requested by the prisoner to look after the cutcherry at Batra in Jhet 1264, B. S. during his absence.

Witness No. 13, Madob Chowkeedar to the same effect, Ditto No. 14, Aizuddeen, Chowkeedar, absent,

Ditto No. 15, Hiramdhun Bissas, Ditto No. 16, Jadub Pullay, Ditto No. 17, Rujjao Kulloo. } To paying in rent to Parbuttychurn at the cutcherry on the 27th Jhet at 8 or 9 P. M.

Witness No. 18, Kartick Bagdee, to taking No. 17, to that cutcherry at 8 P. M.

Wtness No. 19, Bungshee Sirdar, Ditto No, 20, Roopchand ditto, } Absent.

Witness No. 21, Bhuggas Bagdee, to mal pyadah, to seeing Parbuttychurn as above.

For prisoners Nos. 5 *and* 6, *Nubeen, and Rammessur Holdar.* } Ramchand Bhose, witness No. 22, that the two prisoners lodged with him in Chyet 1264, during the latter part of the month, four or five days. They had come to Telinaparah to deliver their accounts.

Wit. No. 23, Bahadoor Sirdar. Is immediately identified by the prosecutor as one of his guards, swears to selling mangoes to him at Ramchand's and receiving the money next day.

Wit. No. 25, Juddonath Pal. Swears to supplying them from his shop from 23rd to 27th Joistee idem, during their stay at Ramchand's. The former paid 10 annas, 6 pie and the latter 7 annas and gave an order for 2 annas on Ramchand. (This man is also pointed out by the prosecutor as being Calidoss's duftry.)

For No. 6, *Rammessur, witness Nubeen Sirdar, No.* 26.—To being told by the prisoner on the 25th or 26th of Jhet, 1264, that he was going to Telinaparah and directed to look after the cutcherry, also to being told by Juggernath on the 25th idem, that he was going to see his uncle Ragobere who was ill at Ballee.

By this Court.—Is unable to say, what day of the week or date of the month or year, the present day of his examination was.

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Witness No. 27, Syobul Kur, Ditto No. 28, Soobul Sirdar, Ditto No. 29, Hullodhur Sirdar. } The prisoner declines to examine these witnesses (The Court asked No. 27, on his entering the box that question with the like result. This was not recorded) and these witnesses were not examined.

For prisoner No. 7, Madub Singh, witness No. 30. Sham Chuckerbutty speaks to Madub's advancing 5 Rupees to Sham Tantee on the night of the 37th Jhet; and the latter executing a bond for it on the following morning.

Witness No. 31, Sham Tantee.—Absent.

For Juggernath Singh, prisoner No. 8, Muddoo Chowkeedar, witness No. 33. } To the prisoner going to his uncle at Balee on the 25th Jhet. In answer to this Court, this witness could not say the day of the week or month or year alluded to, such knowledge as being by far too difficult a matter for him and this closed the evidence for the defendants.

A plan of the premises has been prepared, under the orders of this Court and put in, as also, letter No. 266, from the Joint Magistrate of Serampore, to show that the Magistrate of Serampore on the 27th of January last had gone to the garden-house of prisoner No. 1, Calidoss, pursuant to the orders of the Commissioner, No. 177, 11th May idem, to attend a meeting regarding the traffic of the district. This information was called for in order to test the statement made by the prosecutor that on this occasion he was removed to the privy. Further to test the statement of the prosecutor, the Magistrate was directed to cause the production in Court of the leper uncle and cripple nephew. The former was produced in Court and was sent round to where the prosecutor was sitting and was at once identified (he had no knowledge that these parties had been sent for). The nephew was kept out of the way by the zemindar's people (Darogah's report) the uncle admits that his nephew is a cripple, denies all knowledge of the prosecutor or that he has a *pan* garden. The Darogah states that being ryots of the zemindar defendants, they would be certain not to give evidence for the prosecution. The object in sending for these men, was merely to corroborate the fact stated by the prosecutor as to the individual peculiarity of the two men, names unknown, the owners of the *pan* garden. The uncle was a spotted leper. The fact *protanto* supports the prosecutor's statement and the abduction of the nephew by the zemindar's people, is not a *protanto* favorable circumstance to them, but the contrary.

Mr. Graham for prisoner No. 2, Rajkishen and Mr. Newmarch for prisonor No. 1, Calidoss, address the Court for the prisoners occupying the entire sitting of the 25th from 11 A. M. to 5½. The former admitting the serious nature of the charge, points out, that the case is one of motive originating in the ill-

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feeling of the ryots on account of the attempted measurement of the lands and their combination to resist the same, and that the evidence on both sides is given by persons more or less interested; for the ryots, the ryots, for the zemindars their servants, but with reference to the imprisonment of the prosecutor in their master's house, the evidence of servants was naturally the best. Denying the outrage of which the abduction was on off-shoot, he denies in the name of his client any knowledge of a participation in the act of imprisonment or that the prosecutor was imprisoned. Then upon the evidence, he observes, that Ramcoomar's deposition in the Magistrate's Court differs from the account of the prosecutor inasmuch as the former states that he was removed from Telinaparah three or four days after being conveyed there, whereas the latter describes the removal as taking place, at 3 or 4 A. M. of the night immediately succeeding, when he was taken with Ramcoomar, to Manicknuggur; 2ndly, that the latter denies being treated by Deenoo Doctor at Chundernagore, whereas the former states that he was treated there. Then that the case was full of improbabilities; first that the son should continue to sleep on, that the prosecutor should be able to go to Telinaparah, after the necessary exhaustion consequent upon loss of blood, which he describes as five or six seers, and that he should be taken some 20 miles across country without attracting notice and observation of the police or others is *primâ facie* improbable, not to say impossible. Then with reference to his particular client, that interviews between the prosecutor and himself are not shewn to have taken place; that the original writ taken out was at the suit (VII. 1799) of Calidoss, and the mere fact of his being found at Telinaparah by the Magistrate, does not destroy the statement that he was there as a guest.

It may be necessary here to state, that in the original deposition of Ramcoomar their transfer is stated to have been three or four days after their arrival at Telinaparah. This witness in this Court states in accordance with the prosecutor, that they were both removed, on the night of that day at 3 A. M. to Manicknuggur; 2nd as to Deenoo Doctor. The prosecutor denied his being under his treatment. The words used by Ramcoomar are that they were removed to Deenoo's, "*Chekutsya Kuraiya;*" that they remained there the day and night following and on account of a difference as to the terms of hire, they were removed again. The whole meaning of the passage is clear they were taken to Deenoo's with the intention of having medical assistance and the mere fact of their speedy return is conclusive as to there having been no medical attendance whatever.

Upon the next point as to the conduct of the son. His father left the house telling him to be still. This was at 3 A. M.

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On the morning he set on foot enquiry as to his father, and applied that day to the Police and to the Magistrate of Howrah, and proceeded shortly after to Hooghly, to see if his father had been delivered there, under the writ, and then as to the ability of the prosecutor to go to Telinaparah; he was removed, one leg touching the ground occasionally, when the *lattials* could not procure a *dooly*, the other prosecutor who was not wounded having arrived long before him, and as to the quantity of blood, the expression is simply figurative, merely meaning that there was great hæmorrhage, which must have been the case from the nature of the wound, which was very deep and down to the skull. Then as to what at first sight may seem extraordinary, that he should be removed without observation, through the fields, &c., to Telinaparah.

In June before the rains set in, during the midday hours, who is in the field? To any one acquainted with the country and the habits of the people, this is not a very striking fact, and to enter the house at Telinaparah, there are modes of entrance not limited to the principal gateway.

Mr. Newmarch refers to the antecedent position of the parties, as shown by the reports of the thannah mohurrirs of the 3rd and 4th of November, and to the previous actions brought by Ramcoomar and others against the zemindar's people and to the admitted "*Dhurmghat*" or combination, and the necessity of more carefully weighing evidence by parties to it. That it was a remarkable circumstance that the prosecutor should recognize no less than eighteen men as concerned and that a bright moonlight night should be selected for the occasion, or that the whole village being alarmed, active resistance by the villagers in a body should not have been made, especially if the prosecutor was detained at Khanpore till 8 or 9 A. M. of the morning following. That the time when the outrage took place is described variously; by the prosecutor as at about midnight; by Ramcoomar as at about 1½ A. M.; by Ramkishore Surkel as about 3 A. M. and that the prosecutor's account is not in accordance with what was stated by Bissonath Kartick and Bugwan Ghose as to their being with him at the time when he was wounded, they having been roused by the Chowkeedar; and that his statement as to meeting Bungsy Mullick at a time when he describes himself as *behosh* or in a faint, was obviously absurd. That his incarceration was full of improbability in face of the enquiries set on foot by Ramtaruck his son, the proceedings under the summary suit; that it is highly improbable that his guards would assign reasons for his removal from place to place. That Deenoo Doctor's evidence contradicts him on the fact of his having ever gone to them at all. Further that the fact of his client Calidoss ever having a carriage at the time or hiring was

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distinctly denied upon oath, and the further testimony of witness No. 26, Monohur Kubeeraz, contradicts the prosecutor's statements; and on the Court's suggestion that some explanation should be made as to the fact of the prosecutor against whom execution was out, December 7th, walking as it were into the lion's den, Mr. Newmarch observes, that this would be a very natural step, where the immediate release had been arranged, by Ramkishore Surkel, in communication with him. Further, that the evidence of the Durwans and others taken down to Howrah. Such evidence would be naturally given to meet what they would conclude to be the wish of the Magistrate, that they were not under subpœna; that this proceeding of the Magistrate, was irregular and the evidence is inadmissible; that one of them, Bechoo Augustee, was a defendant in the case and might have been transferred to the dock; that being taken behind the prisoners' backs, it cannot be used against them and such as it was probably taken down by the mohurrir in a corner. That as to Bogbotty, his evidence in this Court, amounts to seeing him there the evening previous. That his statement in the Magistrate's Court was not on oath. Then as to the case itself, it was a conspiracy; there was some undisclosed agency at work; that no objection need have been made by Ramkishore, disclosing the name of one of his informants, who lived at Nurna; that the other whose name was disclosed by the Darogah to the Magistrate might be a co-sharer; that it was a person of weight and consideration was admitted and therefore the defendants were entitled to assume that this party was a member of the confederate co-partners. Whence too the extraordinary activity of Ramkishore? As to the Magistrate's statement that he was ready to proceed with him several days before, this was mere simulation,.and had he then proceeded, the prosecutor was then at Sooksagur, from which place he had been brought back, three or or four days previously, to Telinaparah. Then too the Magistrate's arrangements were the very thing to give success to preconcerted scheme of introducing the man into the premises immediately before his release; that Ramkishore was very familiar with all the premises; more so than was natural and that in his accounts of the caption, he differs materially from the Magistrate, who scarcely recollects whether he entered the room a few steps or not and can only state that to the best of his belief there was a scuffle going on. Then as to Serjeant Wales' account that a cat could not enter. Their statement was, that the outer gate was always open and the very fact of the number of the guards employed by different zemindars, would render the covert introduction of the prosecutor all the more easy; there was moreover a door near the cook-room, through which he might have been introduced, and, further, there was evidence to show that two guests were there

that night, one of whom had been examined, and had the prosecutor been there as a prisoner, in five minutes he could have been removed. Then where is the evidence of actual incarceration and custody? Look at all the carelessness, the improbability of such a place being selected. Then as to the wound-scars when were those wounds inflicted? How long have they been inflicted was a question Doctor Palmer could not speak to. That the mere filth and dirt of the brahminical thread was an imposture to work out an appearance, and as to his emaciated appearance, the prosecutor being a *Kubeeraz* could physic himself down to any point in a few days to meet a particular occasion. Further, would a Baboo in the position of prisoner No. 1, Calidoss, for a trumpery debt of eight rupees put himself to the risk of so serious an action, and to the certainty of very heavy law charges. That no case has ever been instituted against either prisoner No. 1, Calidoss, or prisoner No. 2, Rajkishen, in any Court. That they are not ryot oppressors and further it is urged that the prosecutor might have examined Noboo Coomar Chowkeedar, Thakoordoss and Jan Mahomed Burkundaz and Bonomali Bital or the other shareholders, and that further, the evidence of the prosecutor had been met and contradicted and that on the day of caption, evidence had been given to prove that the two zemindars, prisoners Nos. 1 and 2, were in Calcutta.

Baboo Ashootos Dhur for the prisoners Nos. 3 to 8, alludes to the position of the parties, respectively; to the admitted combination of the ryots; leaves that part of the case dealt with by Messrs. Newmarch and Graham; maintains that the *alibis* have been sustained; refers to the reports of the Mohurrirs of the thannah previous to this occurrence as favorable to the zemindars, showing that the acts with which they were then charged were not found; refers to the contributions collected by the ryots to defend themselves, and more especially that the *alibi* of Parbutty is well sustained.

With this the case of Pittumber Bural closed. The case of Ramcoomer, calendar No. 1 was then commenced. This case originating in a common outrage, as the consideration of the one case contingently involved the consideration of the other, so far as the *corpus delicti* was concerned, it appeared to me the course most favorable to the prisoners to abstain from calling upon the law officer for his *futwa*, until the evidence in the next trial had been heard, and to call for *futwas* in both cases simultaneously.

Trial No. 2.—Remarks by the Sessions Judge.—This case is common in its origin to that of Pittumber Bural *versus* the same parties.

The prosecutor states that his house was broken into at about 3 A. M. on the night of the 27th Jhyet by prisoner No.

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4, Parbutty Ghose, Nobin Mitter, prisoner No. 6, Ramessur Holder, prisoner No. 3, Ruheem Sheikh, prisoner No. 7, Madhub Singh, prisoner No. 8, Juggernath Singh, Chuberauz and Bowany Misser, with twenty or thirty others; orders were given by the above gomastha prisoners, to seize him, plunder his house and destroy the family caste.

The prosecutor climbed up to the beam, when his house was forced, the *kopat* of his door being broken. Chuberauz and four or five others entered; his *petterah* was broken into, and the box in which his deeds and muniments of title were, together with his money 75 rupees, and the ornaments of his wife and daughters, was rifled, (an action has been instituted by the zemindars defendants recently, to resume these lands held formerly as lakheraj and notice has been served upon him to defend it). The inmates of that house were his wife, his son, Robiram, since dead, his daughters Lukimony and Khetoo, unmarried, and in another house within the same enclosure were sleeping Pudoomony the prosecutor's sister and her niece Trilokmony the prosecutor's daughter. The wife was stripped off her ornaments; the daughter Lukimony on flying from the house was seized by Chuberauz thrown down and stripped of the ornaments off her person. Her father, who had come down from the beam when his female relatives were being maltreated, was seized whilst endeavouring to escape, was beaten and his son Robiram, a boy, who begged them not to maltreat his father, was struck, the latter, on the opportunity afforded by the *lattyals* plundering his daughter, ran away and jumped into a tank, which was surrounded, he was taken out of the water, removed to the house of prisoner No. 3, Ruheem Sheikh, at Khanpore, a contiguous hamlet to Nurna, thence he was removed to Telinaparah, which place he reached in charge of four *lattyals* at about 1 P. M. of the following day having been taken through the *jheels*.

Trilokmony his widow-daughter was robbed, as was Puddomony, and to destroy the caste of the family the former was bitten on the right cheek, if not otherwise ill-used, Khetoomony being unmarried, had no ornaments. It would be needless to recapitulate the statements already recorded as to how the prosecutor was taken from Telinaparah to Manicknuggur, then to Chandernagore, back to the *pan* garden and Manicknuggur and Telinaparah, and how he was taken down to Howrah to give in a *razeenamah* which had been forced from him. When there, he took refuge in the Nazir's office, he was then followed by Deenobundoo and Abdoolf the attornies of the Baboo, but his son's attorney, Hambullob, joining him, a petition was prepared to the Magistrate and presented setting forth these particulars, and also the further fact that Pittumber Bural was then lying wounded, a prisoner at the Baboo's house at Telinaparah.

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This petition is dated 13th July, 1857, the order of that date to file it with the record, and an order is made on the 17th to take the evidence of the parties to the episode in the Nazir's offiee, which has never been done, and no order was made with reference to Pittumber Bural, who was then said to be in confinement at the Baboo's house, where he was found and released, eleven months and twenty days subsequently. The reason why Pittumber Bural was not asked to join in the *razeenamah* was, because the state of his wounds rendered his appearance in Court impossible. After his escape he proceeded home to ascertain what ornaments and property had been plundered. The particulars are detailed in his evidence. He states in answer to Mr. Newmarch, that he petitioned the Magistrate and his attorney to carry on the case, and if the Magistrate continued inactive that was no fault of his, and when nothing was done by the Magistrate, I may here add, this prosecutor appealed and the case was sent back to the Magistrate, with such remarks as the unsatisfactory nature of the Magistrate's proceedings seemed to require. On the subject of the dishonor done to his daughter, the prosecutor says, "How can I detail that?" she was bitten on the right cheek. The prosecutor was cross-examined at great length; portions of time with reference to occurrences in themselves almost simultaneous were dissected, and interrogations based upon them, only calculated to create perplexity and confusion and contradiction, and the Court had to remind Mr. Newmarch, that such questions to a party living in a village, where there was no clock and who had no watch, were not susceptible of exact answers, especially fourteen months afterwards, and that this Court would be wholly unmoved by the result of any such examinations which were in themselves at best, but merely collateral and without any appreciable bearing on the material points of the case.

This Court, with reference to the report of the Darogah, 21st June, 1857, sent for Trilokmony the daughter who had been bitten through the cheek, as sworn to by the Darogah in his deposition in this Court, in Pittumber Bural's case, also Sonamony the wife of the prosecutor and Puddomony the aunt of Trilokmony and sister of Ramcoomar and Bindoo, and the jemadar of the thannah who submitted the first report on the 9th of June, 1857, having been sent to enquire into the case on the following morning.

Of the above the four females were produced in Court at 4 P. M. without any communication with the prosecutor, who could have had no knowledge that they had been sent for, and were examined forthwith.

Trilokmony states how she was sleeping with her aunt Puddomony, when her house was violently broken into, hows he was robbed and dishonoured, how she was wounded on the cheek,

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which has healed without a scar, is examined by two women in a private room who state that no scar is perceptible.

Sonamony details the outrage much in the same terms as the prosecutor, names prisoner No. 3, Ruheem, prisoner No. 7, Madhob Chubeerauz, prisoner No. 8, Juggernath, prisoner No. 6, Rameswar Haldar, prisoner No. 5, Nobin as being there, as principally ordering the house to be forced and plundered, and the family honor taken, how they robbed her of her ornaments and how, when, Chubeerauz was plundering her daughter Luckmony, she clasped him by his feet, entreating them on her behalf; identifies the prisoners Nos. 3 to 8, by name with whom she was well acquainted previously, they being the servants of the zemindar and constantly in the village.

Puddomony details the circumstances deposed to by her niece, the breaking into their house, the plundering of their ornaments, the cruel treatment of her niece and her being bitten on the right cheek.

Bindoo was not examined, it was 6¾, and nearly dark and the prosecutor was directed to conduct the whole of these parties safely home.

Parbuttychurn, the Bukshee of the Magistrate's Court, attached to the Nazir's office, at the time that Ramcoomar stated he was brought in by Parbuttv and the zemindar's people and states, that about a year ago Rambullob the prosecutor's Mooktyar entered the Nazir's serishta and said that Abdool Huck was trying to make the prosecutor give in some petition or *razeenamah* against his will, that on asking him, he replied that Rambullob was his Mooktyar and not Abdool Huck, who was either standing within the room or at the door; on account of what Rambullob was stating a large crowd collected; to the best of his judgment, a forcible attempt had been made to give in a *razeenamah*.

Rambullob, Mooktyar, states that on the day when Ramcoomar came to the Magistrates at Howrah he was accompanied by Parbutty, Deenoo and Abdool Huck and the zemindar's durwans Thakoordoss Surkel, Thakoordoss Mundol and other ryots of Nurna were there (they had been sent in to give a *moochulka* by the Darogah) and told him that Ramcoomar had been brought in to give a *razeenamah;* on asking him where he came from, where he was going and what he was doing, he said he had been brought from the Baboo's house at Telinaparah, to give in a *razeenamah;* that he had been brought down by prisoner No. 7, Madhob Singh and others to a moodie's shop at the Howrah *ghat,* where the writing took place, present Abdool Mooktyar Deenoobundoo Mooktyar and Parbutty. On remonstrating and saying, Your son's prosecution and that of the other prosecutors would be ruined, he said he had taken the Baboo's feet and must give in the *razeenamah.* On

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which Abdool Huck laid hands upon him to take him one way and Thakoordoss Surkel another, and upon this a disturbance took place and he took him into the Nazir's office where Parbutty (the preceding witness) was doing duty as Bukshee and Chatoo Boong, another Bukshee. That the altercation going on between him on the one part and Abdool Huck on the other in answer to Parbuttychurn, Nazir's Bukshee, he declared for Rambullob, as his attorney, upon which Abdool exhibited some written paper on a stamp, but whether it was a *razeenamah* or a petition, this witness had no opportunity of ascertaining. Failing in his endeavours, Abdool Huck threatened him and Ramcoomar as did Deenoobundoo and Parbutty; they were to ruin him in his profession. He drafted a petition, which was presented on that date, 13th July 1857, to the Magistrate; presumes Abdool Huck to have been employed *pro hac vice*. When this petition was preferred, Deenoo and Abdool Huck were in the Court before the Magistrate claiming Ramcoomar as their client. This witness is not shaken in the cross-examination.

Mr. Newmarch is asked if he would like to examine Deenoobundoo (in Court) and Abdool to contradict this and the preceding witness, expressing a wish, both were sent for.

The next witness was Ramyad Oza, the police jemadar, deputed to enquire into the case and who arrived in the village of Nurna between 8 and 9 A. M. of the morning immediately following this outrage. He states, that on arrival, he first went to the house, he found the bar which fastened the door broken, all things in the house scattered about, the *pittarah* broken and the prosecutor's wife and daughters were weeping and lamenting. The door also of his nephew's (Jadob and Ramdyal) house was similarly broken. Every thing of any value gone and only worthless rubbish left. Ramcoomar's eldest daughter had a red mark on one of her cheeks, she was ashamed to repeat how that was caused; heard from the villagers that she had been carried off about one *russee* to the banks of a tank, when this was done. Ramcoomar had been carried off, as the villagers and his female relatives and his son Robiram told him. Ram Surkel's house was similarly broken into, and the things scattered about and his *pittarah* broken, probably the extent of the plundering there was not so great as he described; he had been to the thannah and accompanied the jemadar to the village; his clothes were covered with blood and his face, having received a severe wound on the head. Proceeded next to the Sheebtollah where there was a little blood, the villagers pointed it out as where Pittumber Bural had been wounded, within three *cottahs* of this at the threshhold of Ramchunder's sister's house there was a great deal of blood, the ground was saturated and the blood clotted. This spot was pointed out as the place where Pittum-

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ber Bural fell after he was wounded; was perfectly satisfied of the truth of the actual occurrence and that it was not a got-up case. The mark of the wound on the cheek of the prosecutor's daughter was circular, it was swollen, had it been caused by a blow from a stick the whole surface would have been injured, the centre being untouched it must have been caused by a bite. The flesh was not torn nor the skin broken. This outrage was done by the Telinaparah gomastahs, prisoner No. 3, Roheem, prisoner No. 4, Parbutty, prisoner No. 5, Nobin, prisoner No. 6, Rameswar, prisoner No. 7, Madhob Sing, and prisoner No. 8, Juggernath and their followers and the Durwans.

Wit. No. 6, Madhub chowkeedar.

Deposes to the disturbance and being driven away by prisoner No. 7, Madhub Singh and prisoner No. 8, Juggernath Singh; proceeded to the thannah and returned with the jemadar; deposes to the same facts as to the prosecutor's daughter, also to the blood at that particular house; both parties, Ramcoomar and Pittumber Bural, were missing. There were some twenty or forty with Madhub Singh. They are the zemindar's people, cannot say what zemindar. Holds land under the Telinaparah zemindar; admits that these prisoners were the servants of the Telinaparah zemindars.

Bholanath Ghose speaks to the facts of the attack upon Ramcoomar's house.

The Law Officer was of opinion that it was unnecessary to hear further evidence for the prosecution.

The defendants 1 to 8 put in their former answers in denial of the charge.

Deenobundoo Mooktyar is examined by Mr. Newmarch in contradiction of the statement as to the compulsory *razeenamah.* He denies accompanying Ramcoomar to the Howrah cutcherry and the Nazir's office, neither was he with him at any *Moodie's* house at Howrah *ghat;* has no knowledge of the alleged *razeenamah.*

In answer to the Court, Ramcoomar was missing (*goam.*) The Magistrate was repeatedly calling upon him to deliver him up. Seeing him at the cutchery one day, made him over to the charge of the nazir; Rambullub and Abdool Huck in collusion joined in accusing the zemindars of endeavouring to force in a *razeenamah.* They informed the Magistrate who asked Parbuttychurn Bukshee about it and deponent was released; neither did he for his master or his master give any petition to the Magistrate upon this matter.

Mr. Newmarch *declines* to examine Abdool Huck.

On the 28th, the 10th day of these protracted trials Mr. Graham addressed the Court for the prisoner Rajkishen. That there was no evidence of the complicity of his client in the

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actual outrage, the commission of which he still denied, or in the abduction and imprisonment of the prosecutor Ramcoomar who has not charged him by name, his statement of the 10th August, 1857, being general; but now he is able to give minute and particular details, and his statement that they were removed from Telinaparah to Manicknuggur on the 4th day, being contrary to the statement of Pittumber Bural as to his removal on the night immediately following, and that his statement that he was intimidated by the guards threatening him with drawn swords, and so being prevented calling out to the police was contrary to his statement at present that they threatened them with *latties*. Another contradiction was specially referred to, viz. that when Ramcoomar met Jan Mahomed, the Police Burkundaz, Pittumber Bural, was with him, and this was contrary to his present statement that he was alone. The Court asked Mr. Graham if he was sure of his facts, no such statement having been made in his previous depositions, these were then referred to and it was shown that Mr. Graham was misled by his brief, one of several instances during this trial. Then again as to the statement of Pittumber Bural, that Susty Moonshee wrote the letter for Ramcoomar, whereas he says he wrote it himself, that his friends knew where he was, and as to the story of being taken to Howrah, that was very improbable. That the Magistrate's opinion of Ramkishore Surkel's case, was that it was greatly exaggerated; refers to his opinion recorded in that case on the 3rd of January, 1858. That as to his client's privity, a master was not necessarily on the criminal side answerable for the tortuous acts of his servants, unless some act of authorization or ratification subsequently on his part be shown; that as the case stood, any other of the joint owners might be as guilty as the two prisoners; that his client had nothing to do with the action (429) under Regulation VII. 1799 which was exclusively that of Calidoss, in fine that upon no count of the indictment was his client Rajkishen guilty.

Mr. Newmarch for Calidoss prisoner No. 1.

Points out the primary necessity of sifting out the trustworthy from the untrustworthy evidence; states that in the present case the only additional direct fact established by the evidence was that Ramkishore Surkel was actually wounded. That as to the blood deposed to at Ramchunder sister's house that could have been simulated, as also the appearance of house-plunder, broken doors and household things scattered about the prosecutor's house. As to Ramkishore, that as he walked a mile and a half to the thannah immediately after, he could not have been very severely wounded, and the Magistrate would scarcely have arrived at his conclusions, 5th January, 1858, if those wounds had been severe, (Mr. Newmarch is reminded that the Court is trying the case of Ramcoomar, and that as

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to the wound the Magistrate had himself offered himself in the calendar, as a special witness to that particular fact).

Mr. Newmarch then addresses himself to the fact of the case being a conspiracy. Refers to Rubeeram's petition and deposition and Jadob's and to that of Ramtaruck and Ramkishore Surkell's petitions as evidencing a desire to include in the one, the names of those not included in the other, this being indicative of previous understanding; next, that the voluntary statement made by Ramcoomar, that Pittumber Bural could have seen him, was an instance of subsequent communication. That his statement as to the removal from Telinaparah, was similarly corrected in his statement in the Sessions Court; thirdly, that his deposition in the Sessions Court details the chaffering about hire at Deenoo Doctor's for the first time, also the fact that Deenoo Baboo accompanied them. Then as to the improbabilities of the case, that he should be carried off to Telinaparah pinioned without being seen, (Mr. Newmarch is corrected by the Court and it is shown to him, that all that was done, was to pass a *gumcha* round one arm). That his memory was marvellously defective, when he came to be cross-examined. That as to the *razeenamah*, what man, without the strongest guarantees, would act as his client is charged with acting? If this be tree, why was it necessary to write out the powers and *razeenamah*, in the *moodie's* shop instead of directly proceeding to the Magistrate's cutcherry? Why was not the *razeenamah* attached in the hands of this Abdool Huck? As to Deenobundoo Mooktyar, that his statement was a tissue of falsehood, as he stated to his clients; but his falsehood did not set up and establish Rambullob's truth. Then as to the evidence of the women. Robeeram's petition the following morning is silent as to the fact. That the chowkeedar's statement, that he went with the burkundaz to Ramcoomar's house, is contrary to his statement that he first went there with the thannah jemadar. Mr. Newmarch then addresses the Court personally to guard itself against tendencies favorable to the poor as against the rich, points out as a fact much in favor of these two prisoners, that they have not been previously in similar trouble. That by character, they are not resuming zemindars and oppressive, and leaves the case in the hands of the Court. Counsel for the other prosecutors has nothing further to urge.

The Law Officer finds the prisoners guilty, Nos. 3 to 8 of committing the outrage in the prosecutor's house, and carrying him off to Telinaparah, where he was confined with the privity of the prisoners Nos. 1 and 2. That these facts are fully established by the evidence of the different witnesses examined also by the evidence recorded in Pittumber Bural's case. That he was confined there, until his release under the compulsory *razeenamah*, which fact had been fully established by the evidence.

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I concur in this conviction fully.

In Pittumber Bural's case, the Law Officer, on the evidence of the witnesses, that of the two Police Darogahs and the Magistrate of Howrah, the Serjeant and Doctor Palmer, finds all the prisoners guilty. Nos. 3 to 8 of committing the actual outrage and violent assault upon the prosecutor, when he was severely wounded and carried off to Telinaparah, to the house of prisoners Nos. 1 and 2. These prisoners he finds guilty of privity to the same, and to the imprisonment of the prosecutor as laid in the indictment.

I concur in this conviction fully.

I proceed now to assign my reasons for the judgment at which, after a very full and patient and careful investigation and consideration of these cases, I have arrived.

First, there is a total failure on the part of the defendants to shake the statements of either of the prosecutors or their witnesses upon any material point. Stress had been laid upon the discrepancy as to the statement by Ramcoomar in his deposition of the 10th of August, 1857, that the prosecutors were removed from Telinaparah on the third or fourth day of their arriving there. This statement is to an incident merely of time and collateral to the issue. That deposition seems to have been given in more general terms and Ramcoomar says, that this was not his statement, although it may have been so written, but considering that it was his statement, it is a mere collateral matter, and the fact of the two prosecutors being carried off to Telinaparah is not affected by the secondary question, as to at what particular moment they were taken from that place to their next place of imprisonment. This is the principal discrepancy adduced, to discredit the evidence.

Great stress was laid upon a statement as to their removal to Deenoo Doctor's and being under treatment there, a statement put into Ramcoomar's mouth by the counsel for the defence, but really there is nothing in this, for he only said they were removed "*Chekitsyo Korayaya*" which is simply, that for the sake of being attended to, they were taken to Deenoo Doctor's. They were not attended to as is manifest from the fact that Deenoo Doctor would have nothing to say to them, and they were removed back again on the second day. Running through the list of all the discrepancies, the whole refer to points collateral and most immaterial, nor can anything be gathered to the prejudice of the prosecutor, Ramcoomar's statement, from the fact that in his son's petition, he does not detail the insults offered to his female relations.* He states in his deposition to the Darogah, that they can better speak to what was done to them, than he can (he is a boy twelve years old) and all his petition went for, was merely a request that the Magistrate would direct an enquiry into all the circumstances con-

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nected with his father's abduction during the previous night. The petitioner Ramtaruck, the son of Pittumber Bural, is also a mere boy of some thirteen years of age, and to attribute to these boys a confederate understanding with others, arrived at in the course of a few hours after the occurrence and the abduction of their fathers is more suggestive than probable. Further I would here notice that I am only surprised, towards the close of Ramcoomar's cross-examination, that his faculties survived. Questioned as to intervals between incidents of almost simultaneous occurrence and not susceptible of appreciation, as to the particular hour of the night, when this, that and the other occurred, as though the prosecutor had the opportunities of noting time by reference to the striking of a parish clock or the sounding of a repeater. Each statement criticised and dissected with extreme forensic acuteness and persistence; perplexed on the one hand in this way, he was crushed under the recollection of the recent death of his son and of his son-in-law, of the dishonor of his unfortunate daughter, coupled by the fact of wife, daughter, sister, being brought into Court, whilst to crown his misfortunes, was the fact of impending action to resume his lands, the muniments of his title having been amongst the plunder.

Immediate notice was given to the Police, the thannah being only one half mile distant. Ramkishore Surkel, the prosecutor, who was not carried off, proceeded there. The condition he was in is described by the witness Ramyad Ozah. His features were scarcely distinguishable; his face being covered with blood and his clothes saturated. The jemadar was there at 8 A. M. The outrage took place five hours previously. He finds at Ramcoomar's house the women wailing and weeping, as native women do on the occurrence of any great domestic calamity. The boy Rubbeeram has a bruise on his arm, the elder sister has a bite on her cheek, the prosecutor's door-bolt is broken and the house rifled, but Ramcoomar is not to be found, he having been carried off to Telinaparah. Similarly Pittumber Bural, is not to be found, the place where he was wounded and where he fell was covered with blood. He also is not to be found, having been similarly carried off to Telinaparah. The jemadar has no doubt of the occurrence of this particular outrage and submits his report. The Darogah of Danjore, of whom I have only heard that he bears a most excellent character, reports the same, 21st and 25th of June, and with reference to all the evidence recorded in both cases, it is utterly impossible for any one to discredit the fact, that on the night of the 27th of Jhyet the house of the prosecutor Ramcoomar was broken open, himself forcibly seized and his house plundered, his women robbed and insulted to make the family lose caste, and that on

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the same night Pittumber Bural was struck down, grievously wounded and carried off to Telinaparah, and it transpires that Ramkishore Surkel was also severely wounded at the same time.

It is abundantly proved, that this gross outrage was committed by the prisoners Nos. 3 to 8 of whom the first four are Gomastahs, in the employ of one or, other of the defendants Nos. 1 and 2, and the prisoner No. 7, Madhub Singh is the Jemadar of Baboo Calidoss at Telinaparah. His brother Chubeerauz, in the same employ, was one of the principal ruffians and most actively employed in robbing the women.

The village of Nurna, belongs, in equal shares, to these two prisoners. The other co-parceners are not co-parceners in this estate. The outrage having been thus committed, the object of it is developed in the abduction of the parties and their removal to Telinaparah. In every step, these two prisoners endorse and support their statements. They gave in the false charge by Goburdhone and Parbutty presented the next day. The first, that his house has been broken into and himself robbed of rents collected by him as *malpaik*. The second, that a similar outrage had been committed in the house of his father Puran Ghose. These petitions by the Baboos may be referred to, 24th June, 1857, 29th of June, idem, 22nd August, idem, and their answer 29th of May, 1858. It may be said that they were under the impression that the statements of their agents was correct; that they were not privy to the actual facts, and the counsel for these prisoners say, Where is the evidence of this privity?

Now, the Magistrate brought with him from Telinaparah, Hullodhur Rae and Bechoo Abustee and took their evidence at Howrah on the same day. The former has been in the service of the zemindar defendants three years, he spoke upon oath, to having seen Pittumber Bural a prisoner, in the Telinaparah house from September last. The latter, to having seen him there a prisoner ever since he took service with the prisoner Calidoss three or four months back. Both of these witnesses are kept out of the way by the defendants whose servants they are.

Had the Magistrate examined them in the presence of the defendants, I should at once have read their evidence as evidence in the case. The 17th Section, 11 and 12 Vict. C. 42, Section 34 provides for the admission of depositions, where they have been taken before a justice of the peace, duly subscribed on the death or illness of that witness being sworn to and in event of that having been taken in the presence of the accused, or that his counsel or attorney had a full opportunity of cross-examining that witness. The prisoners were certainly not present. The Mooktyar may or may not have been present. The Magistrate cannot say that he was. The depositions were recorded in open

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Court and as the prisoners were subsequently before the Court and these witnesses were their own servants, and as they were not committed until three weeks afterwards, had they chosen to do so, these witnesses could have been produced and cross-examined. I have rather construed the point rigidly, so as to exclude, rather than admit, this particular evidence by transfer, but doing so, the inference from the conduct of the prisoners in keeping back these two witnesses, their own servants, so that they cannot be examined, is I consider, very unfavorable to them. But apart from this evidence, no reasonable doubt as to the privity of these two defendants can exist. That they were carried off to Telinaparah is undoubted. The prosecutor Ramcoomar is not wounded; terms are made with him at an earlier stage; about five weeks after his abduction he is sent down, as stated by himself and by Pittumber Bural, under circumstances of duress, to the Magistrate's Court at Howrah, Parbutty and Madhub Singh the Jemadar, and Deenobundoo and Abdool Huck being with him. His fellow-villagers had been chelaned in by the Darogah to give *moochulkas*. These see him and they bring up to his aid the attorney Rambullob. Abdool Huck wishes to carry him one away; Thakore Doss another. Rambullob takes him to the Nazir's office. His buxshee, Parbutty, asks him, whether is the one or the other your attorney; he states that Rambullob is; the case is brought to the Magistrate's notice; the rival parties claiming him as their client. Now it is singularly unfortunate that the Magistrate was not aware of the momentous importance of attaching the papers in Abdool Huck's hands. The only order on the petition 13th July, 1857, is to record it with the case, and on the 17th an order is made to cause the attendance of the witnesses.

The facts were fully proved by the Nazir's buxshee and Rambullob. Mr. Newmarch admits that Deenobundoo examined by him to contradict the above evidence, told a parcel of lies. That Ramcoomar was brought down from Telinaparah to Howrah to give this *razeenamah* as sworn to byhimself and Pittumber Bural, and proved by the Buxshee and the Mooktyar Rambullob, is conclusively proved. Deenobundoo was the Mooktyar of the two prisoners, Calidoss and Rajkishen, and he states that the Magistrate was constantly calling upon him to deliver up these prosecutors, if they were in his master's custody. This fact coupled with the evidence as to the abduction and imprisonment, connects both these prisoners with the transaction to which they are undoubtedly privy. At that time Ramcoomar in his petition stated that Pittumber Bural (13th July) was at Telinaparah under treatment for his wounds. Prisoner's counsel urge that, why send in Ramcoomar only? Pittumber Bural could not be produced in Court at all with those ghastly wounds

still open. Then again it is urged why not go with the Mooktyarnamah and *razeenamah* direct to the Magistrates? Why stop at the Moodie's shop? But it was necessary to engage a *pro hâc vice* Mooktyar. Deenobundoo the zemindar's attorney, could not put it in, nor could his son's attorney Rambullob, and this was what rendered it necessary to find some unscrupulous man, who would undertake this dirty work.

The manner in which the man was arrested, differs materially in one respect from that of Pittumber Bural. There was no writ against him.

Taking therefore the whole case against these defendants, I most fully concur with the finding of the Law Officer, and as both cases proceed from a common origin, I proceed to make a few remarks as to that of Pittumber Bural. On the 3rd of June, 1857, a petition was filed by prisoner No. 1, Calidoss under Regulation VII. 1799, and a writ taken out on the 4th. On the 12th June or four days after this outrage, an application is made to re-issue the writ, the prosecutor having concealed himself. Next follow applications to hear evidence for proclamation, then, November 6th, comes a decree, followed by examination on the 7th December.

The Nazir's pyadahs accompany the *lattyals* to the village of Nurna; this gives a color of law to the question if it comes before the Magistrate; any petitioner being at once charged with resistance to a revenue process, or with an endeavour to counteract it; but the prosecutor is half killed; he cannot be produced in the Revenue Court of Hooghly in consequence. To tide over the difficulty he gives the second application for a re-issue of the writ. But for what honest purpose was this application? It was to raise process evidence in future, and it was also an answer by record, to a charge of the abduction. The case goes on step by step to execution, during the whole of which time from June 8th, to December 7th when execution is taken, the defendant is in the custody of the plaintiff Calidoss at Telinaparah. This is probably one of many instances of the oppression practiced under the summary laws, where Collectors allow writs to issue against the person, for the recovery of arrears which may be realized by distraint of the defaulter's property and by Clause 1, Section 15, Regulation VII. 1799, it is a positive condition precedent to a writ against the person, that the arrear cannot be recovered by distress, the property protecting the person, and this law has never been repealed.

The proceedings taken in the Magistrate's Court are equally disgraceful to the zemindars. False charges are immediately put in, these are endorsed by the zemindars and referred to by them with complacency in their answers, and every thing that can be done to carry out the basest ends, by our revenue and criminal

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Courts is done by the defendants and the hideous nature of zemindary morality is painfully exhibited in both these cases.

The Magistrate of Howrah omitted to test the statements of the prosecutor Pittumber Bural. One was as to the Magistrate of Serampore going to the house of Calidoss Baboo. Information on this point was called for by this Court. It appears that by order of the Commissioner, that officer on the 27th January last, attended a meeting at the house of the prisoner Calidoss.

Another statement was tested as to the *pan* garden, which was said to belong to the uncle and nephew, the former a leper, the latter lame at the hip joint. The former was produced in Court without any previous knowledge of the prosecutor and at once identified, the latter admitted by his uncle to be a cripple was concealed by the zemindar's people, so far the statements of the prosecutor are confirmed. Had he been in collusion with these parties he would have named them, they were sent for *propria motu* by this Court. Then there can be no doubt as to the fact, that Pittumber Bural was found in the house of the Baboos by the Magistrate, but it is said he was there as a guest. Mr. Wale's testimony on that head may suffice, a cat could not get in there without being seen. It was suggested that the shareholders might have introduced him, but there are no quarrels. Then the man is found by the Magistrate on the information of Ramkishore, who was ready to go there with the Magistrate for the previous fifteen days. Where he was when left on the 13th of July, 1857, by Ramcoomar, there he is on the 7th July, 1858, when rescued by the Magistrate. Further, where the prosecutor was found was not the guest chamber, this is clear by the plan, and the evidence given by the defendants as to the curtain belonging to a guest or that the outer door was always open at night, is totally unworthy of credit. The guest would not have bolted away in the advent of the Magistrate and even the doors of *seraes* are shut at night. The *alibi* attempted to be set up by the prisoners Nos. 1 and 2, in the face of the statement made to the Magistrate to the contrary by all, when first asked, I totally discredit. It may be not out-of-place here to consider the case, analogically, by putting it into its English parallel.

Mr. Smith and his nephew own large estates. Wishing to increase the rents of their tenants to which the latter will not agree, they employ a set of armed retainers, break into their houses at midnight, and have them brought from the country, to their house in the neighbourhood of London, *eo instante*. On the following night, notice of the outrage having been given to the county Magistrate and the fact of their having been taken to this particular house, having been reported before dawn of the following night, they are removed to a house belonging to a

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cousin of these gentlemen. Thence one of the tenants being very severely wounded, and it being necessary to keep them together for more easy custody, they are sent to a London physician, who, being a Government employee, refuses to have anything to do with them and they are removed back, to the cousins, after having been kept during the day in one of the London nursery gardens, the owner of which is a servant of these gentlemen, every day they are removed to the nursery garden, lest the police search the cousins' house and every night they are taken back and shut up in the house lest they should escape, and after some time they are again removed to the house of Messrs. Smith. Worn out by this oppression, after five weeks one of them agrees to the proposals made and in charge of these retainers is sent down the Thames in a steamer, to the immediate neighbourhood of the Magistrate's Court. He is landed; the necessary instruments are completed at the first public house and when at the Magistrate's house he encounters his friends and fellow-townsmen, who were in attendance to give recognizances to keep the peace; finding himself amongst friends, who interfere to prevent his further abduction, his son's attorney is sent for; comes to the rescue and the Magistrate is duly informed and the party saved. The other party still remains a prisoner with the Messrs. Smith. That fact is specially stated to the Magistrate in the July preceding. He could not be produced in Court because his wounds were still open. The county Magistracy is told that their proceedings are very unsatisfactory, fresh enquiries are at last made. The prisoner is now sent up to Maidenhead in a coal barge, the temporary purpose answered, the prisoner is brought back to the house of the Messrs. Smith, a house well kept and guarded by his numerous armed retainers. Here he is found by the Magistrate, emaciated and wasted from long confinement, and inadequate diet, his skin is the color of an egg, he is half-starved and ravenous for food, over excited by joy at his rescue, there is no keeping his tongue still. Free of wounds before this, he points to the deep scars on his forehead, in confirmation of the brutal treatment he is detailing to his audience. In addition to all the evidence to the outrage, these particular facts go before the Jury, can they believe for one moment, that because this tenant was also a village doctor that he had physicked himself into this condition to support a case wholly and entirely false. As a Judge of facts, in the place of the Jury, I have no hesitation in convicting the prisoners Calidoss and Rajkishen.

I concur therefore very fully with the Law Officer in his *futwa* in the case of Pittumber Bural. Either case standing alone, I should give the same amount of punishment to the prisoners, but I do not feel at liberty to give a commutative sentence of seven years' imprisonment, in each case, and therefore I sen-

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tence prisoners Nos. 3 to 8, who are worse than dacoits, to seven years' imprisonment with hard labor in irons.

Taking into consideration all the conduct of Calidoss; those false proceedings in the revenue Court; the active part he has taken together with Rajkishen, in supporting the story of the other prisoners in the Magistrate's Court; the false accusations preferred against the prosecutors and the villagers of Nurna; the prostitution of our Courts to the worst purposes as evidenced further in the attempt to force in a *razeenamah ;* the assertion of a power superior to the Magistracy, as evidenced in the continued imprisonment of this unfortunate man, Pittumber Bural; the defiance set to all constituted authority, and the necessity of putting down this *lattyal* system, with the existence of which Civil Government is impracticable, I sentence this prisoner to imprisonment with labor and without irons for the period of seven years, and admitting that there is a degree of less criminality attaching to Rajkishen, as urged upon this Court, I sentence him to two years' imprisonment with labor commutable on the payment of a fine of one thousand rupees within one week.

I shall direct the Magistrate to take steps to bring Chubeerauz and some others to justice, also to take into consideration the conduct of these two Mooktyars Deenobundoo and Abdool Huck, who were concerned in the fraudulent attempt made by the defendants to file a *razeenamah* obtained under duress, and the attention of the revenue authorities will be called to the parties engaged in carrying on that summary suit No. 429, through the Collector's Court at Hooghly at the time when the defendant to it was in the custody of the plaintiff. The Mooktayars engaged in the conduct of these vile cases, well know what they are about and an example of some of them is much wanted.

Should this case come under the notice of Government I wish to add, that I feel satisfied that the Magistrate of Howrah, with only his present staff, cannot possibly perform his duties as should be done and to suggest that a permanent resident Magistrate be attached to Howrah, to relieve Mr. Grey of the bulk of the local cases and give him time to follow up his cases as they should be followed up. He has at present assistance of the moonsiff of Sulkea as Deputy Magistrate and he has Mr. Alexander as the Assistant Magistrate, a staff altogether inadequate for the duties to be discharged and the public justice of the country suffers in consequence; and further it is for consideration whether the legislature ought not to provide some means for the measurement of the village lands, a right vested in the zemindars by Clause 7, Section 15, Regulation VII. 1799, so as to protect both parties from exaction on the one hand and undue opposition on the other.

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It was obviously unnecessary to go on with the trial of Rajkishore Surkel. The prisoners had the opportunity of cross-examining him as a witness, and these cases have already occupied the Court from the 18th to 28th inclusive.

That Calendar was accordingly cancelled and the witnesses discharged.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and C. B. Trevor) These eight prisoners were committed for trial upon two separate indictments having reference respectively to the charges preferred by the two prosecutors; but the facts of each case are so intimately connected that in stating the particulars we may treat the cases as one and the same.

The Judge's finding assumes that the villagers of Nurna had openly resisted the gomashtahs of the zemindars, Calidoss and Rajkisto Banerjea, in their attempts to measure the village lands with a short rod, and, in consequence of this dispute, the gomashtahs at the head of a large body of *lattyals* entered the village about 3 A. M. of the morning of the 8th June, in last year, and, after plundering the houses of Ramcoomar Mundul and Ramkissore Surkel, laid violent hands on Pittumber Bural and Ramcoomar and carried them off (the former being severely wounded) to the house of the zemindars at Telinaparah, where they were kept in confinement by the said zemindars; Ramcoomar until the month of August following, when he was released on the understanding that he would present a *razeenamah* and seek no redress for the outrage; and the other, Pittumber Bural, until liberated in July of the following year by the Magistrate of Howrah, who, with that object, proceeded in person to the house where the zemindars resided at Telinaparah.

On this finding, the prisoners Nos. 3 to 8, have been convicted of riotous assault with severe wounding and carrying away of Pittumber Bural, and of riotous assault with plunder and carrying away of Ramcoomar Mundul, and the zemindars Nos. 1 and 2, of privity to the above offences, and false imprisonment of the two prosecutors Pittumber and Ramcoomar. A consolidated sentence has been passed on defendant No. 2, Rajkisto Banerjea, of two years' imprisonment with labor commutable by a fine of 1000 Rs. and a consolidated sentence of seven years' imprisonment with hard labor upon all the other defendants.

All the prisoners have appealed, and, with the exception of Madhub Singh and Juggernath Singh, have employed counsel to defend them.

The defence sets forth that the prosecutors have conspired with the other ryots of Nurna to bring these false charges

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against the zemindars; that their statements are opposed to probability, and the evidence adduced altogether insufficient to support any reasonable belief of the guilt of the prisoners.

In the first place, our attention has been called to the account on record of what took place at Nurna, and the absence of any reliable proof of the alleged outrage having ever been perpetrated there; that the case for the prosecution assumes that one of the villagers, named Ramkissore Surkel, was wounded, and presented himself before the police to give information of the occurrence with his clothes saturated with blood, while a small wound only was apparent on his forehead, which wound is not even noticed by the Magistrate, when recording the complaint which this man preferred before him on the same day; that such a wound as was shown to the police could have been self-inflicted without risk and can go for nothing in establishing the reality of the alleged outrage; that the existence even of another wound said to have been inflicted on the cheek of Ramcoomar's daughter was never established on any good authority, that wound having been described by the Police as caused by a bite from one of her assailants intended to disgrace the girl, whereas she herself declared it to be from the blow of a *lattee*, and when looked for at the Sessions Court not a scar even was perceptible; that, independent of these assumed indications of a hostile attack on the villagers, nothing further was produced in proof of it, except the remnants of broken boxes, scattered papers, patches of blood, and the disordered state of the houses said to have been pillaged, all which could have been easily got up for the occasion by the villagers themselves; that Pittumber Bural, who describes himself as having been severely wounded and carried in a helpless state, a distance of twenty miles to Telinaparah, was still able at different times to identify thirteen of his assailants, describing their actions and repeating their conversation, though he could not mention a single person whom they encountered on the road; that during his alleged confinement at Telinaparah, or occasional removal to other places, where he states he was seen by other persons; those persons, when summoned by the Sessions Judge and confronted with the prosecutor, denied having ever met him, as asserted in his deposition; that Ramcoomar's statement regarding the preparation of a *razeenamah* to present to the Magistrate of Howrah, his subsequent appeal to the Magistrate for protection and representation in Court, of his having been then released from Telinaparah, where he had left Pittumber wounded and in confinement, failed to make any impression on the Magistrate, who, at the time, discredited the whole story; that Ramcoomar then made no attempt to

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procure the seizure of that *razeenamah*, though alleging it was in the possession of the zemindar's Mooktyar, who had accompanied him to the Magistrate's Court, though the seizure of the document would have been conclusive proof of the truth of his statement; that up to last December Ramcoomar made no attempt to criminate the zemindars but only the gomashtahs; that the Magistrate himself never regarded them as implicated in the charge until the Sessions Judge in his proceeding of February last, addressed to the Magistrate of Howrah, had denounced them as the instigators of the outrage and directed the Magistrate to proceed against them; that on receipt of these orders, the Magistrate encouraged Ramkissore Surkel to bring him intelligence of Pittumber Bural, promising to proceed to Telinaparah, when assured that Pittumber was in the zemindar's house; that some influential person in the back ground then conspired with Ramkissore Surkel and Pittumber and contrived that the latter should be smuggled into the zemindar's dwelling-house, despatching Ramkissore to summon the Magistrate; that, in this way, the Magistrate was led to believe he had found Pittumber Bural in confinement at Telinaparah, and that the remarkable appearance exhibited by him was either produced by drugs, the properties of which he, as a *Kuberaj*, might be supposed to know, or was the effect of natural illness, the consequence of his having kept himself concealed so long in furtherance of the scheme for which these charges were concocted.

This is the substance of the argument submitted to us in defence of Calidoss Banerjea, while on the part of Rajkisto, it was urged, in addition to the above, that he did not reside in the family dwelling-house within the precincts of which the *poojah dullawn* is situated, wherein Pittumber Bural was found, though it was admitted that the *dullawn* was a place of *poojah* common to all the shareholders. It was therefore pleaded that any inculpatory inferences arising from the fact of Pittumber being discovered in that place could not be taken as conclusive either of Rajkisto's knowledge of, or participation in, any act which might criminate Calidoss, who resided in the family dwelling-house.

The other defendants pleaded their non-complicity in any of the offences charged. They drew attention to the combination of the villagers entered into for the express purpose of resisting the zemindars, and alleged the probability of their having been accused because as gomastahs and servants of the principal defendants, they had previously complained against the ryots of Nurna for having forcibly resisted the measurement of their lands. Parbuttychurn likewise argued that as he was employed by Rajkisto as gomastah of another village at

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some distance, he had no interests to serve in joining in an attack on the ryots of Nurna, and was not likely to have done so without inducement of any kind.

On the other hand, there are on record the statements of the ryots, who depose to the attack and plunder of some of the houses of the village on the night in question; to seeing the assault committed on Pittumber and Ramcoomar and identifying the prisoners, Nos. 3 to 8, among their assailants; to witnessing the abduction of these two men and their being carried off to Khanpore, but to their knowing nothing further of their fate until Ramcoomar re-appeared some weeks afterwards and told his story. There is then Ramcoomar's account of his having been taken to Telinaparah and kept in confinement where also Pittumber was brought in a wounded state and where he left him in August to present a *razeenamah* in the Howrah Court, with the circumstances attending that part of the case, and finally we have the deposition of the Magistrate of Howrah and others, to the discovery of Pittumber at Telinaparah, the miserable plight in which he was found, and the unfeigned expressions of pleasure which he gave utterance to when so unexpectedly restored to liberty; the whole forming with Pittumber's own statement, a connected and consistent chain of circumstantial evidence tending irresistibly to establish the main facts upon which the charges against the prisoners are founded, while to meet and rebut this mass of evidence, on the part of the prosecution, we find nothing set up in defence, but certain *suggested possibilities* and the evidence of some servants and dependents, who are all open to the suspicion arising from strong influential bias in favor of the principal defendants.

As, however, these points of defence have been earnestly pressed upon our attention by the defendants' counsel, it is incumbent upon us to record our reasons for holding them insufficient to relieve the defendants from any part of the charge which the evidence for the prosecution establishes against them.

In the first place, then, with reference to the outrage, alleged to have been perpetrated at the village of Nurna, on the night of the 8th of June last year.

The reasons urged against the credibility of the witnesses who deposed to this matter was their hostility towards the zemindars and their enmity against the gomastahs accused by them. But in all particulars stated by them they have been supported by the recorded statements of the police, who visited the spot immediately after the occurrence and by the concurring testimony of the two prosecutors, whose abduction is so clearly proved, that we must regard their accounts of what occurred as independent proof, there having been neither time

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or opportunity for concert, as they were removed from the village by the assailants, and without the power to consult or concoct evidence in concurrence with those on the spot. The proof therefore of the perpetration of the outrage is full and reliable, notwithstanding the existence at the time of some hostile feelings between the villagers and the accused. This part of the evidence, however, as we shall further remark hereafter, applies only to the prisoners, Nos. 3 to 8, and not to the zemindar defendants.

The next point is, that when the owner of the *pawn* garden in which the prosecutors allege they were at one time concealed and the native Doctor, Deenoo, of Chundernagore were summoned by the Sessions Judge, they both denied all knowledge of the prosecutors, thus in fact directly contradicting their statements. But it seems to us that if the prosecutors had really fabricated their story (as argued by the defendants' counsel) and felt the necessity of supporting it by independent evidence, they would scarcely have described the appearance and designation of persons who could thereby be identified, when not assured that when confronted with them they would confirm their statements. The fact that these persons were traced out from the descriptions given by the prosecutors, and when examined denied all knowledge of them, cannot, in itself, be conclusive against the honesty of their statement, as the probability still remains that if the zeemindars employed these witnesses in the furtherance of their designs, there must have been some influential connection between them, as they would not have trusted them with a knowledge of their secret, unless well assured they had the means of ensuring their silence.

Thus the apparent contradiction by these persons of the prosecutor's statement may be accounted for, and in weighing the probabilities as to which party is more likely to have given credible evidence on this matter, we think the balance is in favor of the prosecutors, and whose statements have on other points been satisfactorily supported, that they have truly indicated facts in this instance also which the influence of the zemindar defendants has induced these witnesses to deny; while that denial goes far to refute the assumption that this part of the case has been concocted by the prosecutor.

The next matter to be considered is, the argument adduced against there being any truth in the representations of Ramcoomar to the Magistrate of Howrah in August, 1857, regarding his own release from confinement, because the Magistrate of Howrah evinced his disbelief of them by the orders he subsequently passed in December following.

It is true that the Magistrate at that time evinced considerable backwardness in taking up the complaint and allowed the case to dwindle on until the end of the year, without making any

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effective investigation into its merits. But we fail to see how this backwardness on the part of the Magistrate casts either discredit or suspicion on the truth of Ramcoomar's complaint. Ramcoomar then, as now, told the same story, how he had been kidnapped and carried to Telinaparah, how his release had been obtained under the condition of filing a *razeenamah* in the case then going on against the gomastahs, how he had left Pittumber severely wounded and in confinement in the zemindar's house, and how he had gained courage to repudiate the *razeenamah* and make his complaint in person.

As the same means which the Magistrate afterwards employed to ascertain the truth of Pittumber's state were as much within his reach then, as when he afterwards made use of them, we are at a loss to divine why so little energy was then displayed, but it may be fairly presumed that if the Magistrate had availed himself of those means earlier, the same good results would have followed, and consequently the discovery of Pittumber Bural and his liberation at a *later* period, are as much attributable to Ramcoomar's statement, as if those events had followed more *immediately* upon his complaint.

No discredit, therefore, in our opinion, can be attached to anything Ramcoomar communicated to the Magistrate, simply because that authority neglected to act upon it until the orders of the Sessions Judge roused him to action.

Regarding the discovery of Pittumber in the house of the zemindars, it is admitted to be an overpowering difficulty for the defence to get over, and is only met by the suggestion that the man might have contrived to secrete himself on the premises and so managed that he was found there in the morning. But nothing in the shape of reliable evidence is set up to support this view of the case, and had the whole question of the guilt of these persons depended on the solitary point of the prosecutors' presence in the house, there might have been some reason in disputing the point as one affording *conclusive* ground for a verdict against the prisoners.

But there is much more ground to go upon than this. There is ample evidence of the state in which Pittumber was found. His squalid and emaciated appearance, evidencing a long and protracted confinement with want of proper food, and the neglect of his bodily health. Then if the statements of his neighbours and of Ramcoomar, who had last seen him, rightly described the state in which he was carried off by his assailants, one would expect to see the marks of the wounds from which they said he was suffering; and there on his skull and forehead the scars of the cicatriced wounds were visible. Had Pittumber been found in sound bodily health and without a scar on his person, the fact would have pleaded strongly in refutation of the previous statements made regarding him and his long disappearance.

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Should not his squalid and emaciated condition and his healed up wounds testify equally strong in favor of the truth of them?

Thus, it seems to us, these several parts of the case, while spread over a long period of time and showing many independent acts of the parties concerned, do in the end, combine together to make up a most complete and coherent whole, so consistent and natural throughout in all its proved facts and the probabilities arising therefrom, that we see no reason to doubt the truthfulness of any part of the prosecution.

The only remaining matter for consideration is, whether the evidence fully supports the specific offences of which the prisoners have been found guilty and for which they have been sentenced by the lower Court.

We coincide in opinion with that authority, that the prisoners Nos. 3 to 8, are guilty of "riotous assault with severe wounding and forcibly carrying away Pittumber Bural" and "riotous assault with plunder of property and forcibly carrying away the prosecutor Ramcoomar Mundul," and see no reason to interfere with the sentence of seven years' imprisonment with labor passed upon them; but we dissent from that part of the finding which convicts the prisoners Nos. 1 and 2, of *privity* to the above offences, and hold them guilty only of the false imprisonment of the two prosecutors, of which offence the Sessions Judge has also convicted them. Circular Order No. 8, of the 7th June, 1847, declares "that the act which constitutes what is called '*privity*' in this country, corresponds with '*misprison of felony*' in English law, viz. the concealment or the procuring the concealment of a *felony* which a man knows, but never assented to, or the observing silently the commission of a *felony* without using any endeavors to apprehend the offender."

Now the offences of which the prisoners Nos. 3 to 8, have been found guilty are not *felonies*, but misdemeanors only, and the law does not make privity to such offences a punishable act. Even then supposing it possible for the zemindar defendants to have been cognizant of the acts of their servants, when those acts were committed, *without assenting thereto*, or to have silently observed the commission of them, &c., this would not constitute an offence punishable by law. But in the present case there are no such facts on record as would justify a presumption, that the zemindar defendants were cognizant of the *open* and *aggressive* acts when committed by the other defendants on the two prosecutors. There are reasons enough to believe that the gomashtahs may have undertaken this expedition against the ryots of Nurna of their own accord. Having experienced the open resistance of the ryots, they may have considered this was the surest way to coerce them into obedience, reckoning upon success and the urgency of the case as likely to absolve them from blame in the eyes of their masters. We do

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not overlook the fact that these persons so convicted are the servants of the zemindars, but there is no doubt that in the position they hold, a great deal of discretionary power is entrusted to them, and it would not be legal to hold the zemindars culpable for an abuse of power on the part of their gomashtahs without proof either direct or presumptive that they so acted at the instigation, or under the directions, or with the consent of their masters. But in that case they would be principals, and the term privity would, in the misdemeanor, clearly be inapplicable.

A clear case of false imprisonment or illegal detention of the person has, however, been made out against both the zemindar defendants.

There has been an attempt to show that Rajkissen ought not to be inculpated by the presence of Pittumber Bural in the *poojah dallaun* of the family mansion, because he resides in a distinct and separate dwelling-house. But independent of Pittumber having deposed to the occasional presence of Rajkissen and to his having recommended him to procure his liberty by compromising the case against the gomashtahs, Pittumber has given, in his deposition, the names of those who were placed on guard over him and took part in his removal from Telinaparah where both Baboos resided to the *Pawn* garden, in which he was concealed, distinguishing some of them as *servants and retainers* of Rajkissen. This fact has not been contradicted by Rajkissen, and while it remains unrefuted, the presumption stands that Rajkissen with full knowledge of Pittumber's captivity, did, through his servants, acting with his knowledge and consent, take part in the measures adopted for Pittumber's lengthened detention and he becomes thus directly implicated in his imprisonment.

It is not, in our opinion, of much importance to ascertain what were the real motives which induced the zemindars to deprive the prosecutors of their liberty. The prosecutors themselves consider their object was to secure impunity to their servants for the gross outrage first committed upon them, and the defendants' counsel has also argued that this may be assumed as the reason. It does not, however, in our opinion, at all palliate the offence of which they are proved guilty.

There is, however, a marked distinction between the extent of culpability assigned to the acts of the zemindars in our view of the evidence and that imputed to them *apparently* by the Sessions Judge, as above observed, we do not hold them to have been even cognizant of the assault and wounding at Nurna, until after the affair, neither do we think that the prosecutors were brought to Telinaparah by the *orders* of the zemindars; had the case been one of that nature, we should not have deemed it necessary to disturb the sentence passed by the Judge, but

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as we consider their connection with the acts of their followers commenced with the detention of the two prosecutors, we believe a less severe sentence will be adequate for the purpose of punishment and example.

We therefore sentence the prisoner, Calidoss Banerjea to imprisonment for the period of three years with labor commutable by payment of a fine of 3000 Rs., and as Rajkissen is a very young man and from his youth and relationship may be supposed to have acted in this matter a subordinate part only, we remit the sentence passed upon him to six months' imprisonment with labor commutable by the payment of a fine of 250 Rs.

We have omitted to remark that the Judge has gone beyond the record in assuming that execution proceedings were had recourse to in the summary suit during the time Pittumber was in confinement. To the process issued, a return was made that neither property nor debtor was forthcoming and after an interval, the case was struck off, so that up to the present time no *actual* seizure was made under the *ex parte* decree procured by the zemindar as supposed by the Judge.

The Court has already, in other proceedings, intimated its opinion that the Judge has adopted an erroneous view regarding the requirements of Section 15, Regulation VII. of 1799.

PRESENT:

B. J. COLVIN AND A. SCONCE, ESQS., *Judges*.,

GOVERNMENT

versus

SUMBHOORAM PURYA (No. 13,) MUSST. JHATEE (No. 14,) AND MUSST. GOOROOBAREE (No. 15.)

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The Court remarked upon the mode in which the Sessions Judge had examined the witnesses to the confessions of the prisoners, and pointed out how their examination should have been conducted.

CRIME CHARGED.—No. 13, with wilful murder in having administered poison to the deceased (Madhub Purya) and thereby caused his death. Nos. 14 and 15, with being accessaries before and after the fact to the above murder.

Committing Officer.—Wuheedoon Nubee, Deputy Magistrate, exercising powers of a Magistrate at Nugwan.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 11th August, 1858.

Remarks by the Sessions Judge.—The prisoners plead "*not guilty*," and in their defence urge that deceased died of cholera, and that their confessions were extorted from them by the Darogah.

The circumstances are as follows: The male prisoner is an own brother of the deceased Madhub Purya, Jhatee is the wife, and Musst. Gooroobaree the "*Dhurmo Jee*" sworn daughter of Sumbhooram. The two brothers quarrelled in consequence of the prisoner having criminal connection with his sister-in-law, the deceased's wife. Madhub frequently beat the prisoner, turned him out of his house, and stopped his *pooja*.* Sumbhooram on this went and lived for a short time with Gooroobaree. His mother, an old woman deaf and rather blind from age, and his sister-in-law Jhatee begged him to return, which he did. But his brother would have nothing to do with him; in fact abused him, saying, *Salah*, be off! and beat him.† Incensed at the treatment he had received from his brother, this prisoner had previously procured some poison "*merasingha*" and kept it by him for the purpose of getting rid of his brother.

On Thursday the 18th Boisack, corresponding with 29th April, the deceased had gone to some marriage-gathering, and did not return until two *gurrees* of night. The mother, Jhatee the wife, and Sumbhooram partook of their evening meal before

* No. 3 Modun Gana, pages 9 to 11.
No. 4, Bhogwan Das, pages 13 to 15.
Confessions of Sumbhooram.
Pages 77 to 80 and 89 to 97.
Ditto of Jhatee.
Pages 81 and 82, and 98 to 104.

† Sumbhooram's foujdary confession, pages 89 to 97.

his return, leaving his portion of it. When he came back he partook of that portion and was shortly after seized with purging and violent vomiting, called out for help and especially asked for his father-in-law, Horee Jana, a witness for the defence, and Bhugwan Burooa. He told those who came that his brother and wife had poisoned him, and writhing for some time, expired at midnight.*

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* Modon Jana, pages 9 to 12.
Radhookoroa, pages 34 to 37.
Horee Doss, chowkeedar, pages 41 to 45.

The confessions of the prisoners have been duly sworn to by the attesting witnesses, and I see no reason to doubt that those of Sumbhooram, prisoner No. 13, and Musst. Jhatee were voluntary and substantially true. The mofussil confession of Sumbhooram is in substance as follows: that his brother the deceased had quarrelled with him because he had taken to him a "*dhurmo jee;*" that he had for two and three years been in the habit of beating him, and falsely accused him of criminal connection with both the female prisoners; that irritated with his brother's treatment he purchased in Calcutta some poison "*merasingha*" and put it in his food that the deceased eat that food, and drank some milk his "*dhurmo jee*" had brought and expired at midnight.

The foujdary confession is, that owing to their quarrel his brother beat him, turned him out of his house and put a stop to his *pooja;* that he, in consequence, procured the poison and kept it by him, but did not go home until his mother and sister-in-law prayed he would do so; that his brother, however, would not speak to, but beat and abused him; that he watched his opportunity and sprinkled the poison into the rice which was left for his brother, who on his return partook of it and died from the effects of the poison. He admits he had criminal connection with his sister-in-law; but declares the female prisoners knew nothing of his diabolical intention, and denies having implicated them to the Darogah.

The next prisoner Jhatee No. 14, admits her criminal connection with Sumbhooram her brother-in-law; the consequent quarrel of the brothers; the proposal of Sumbhooram to poison her husband, to which she at first says she would not consent; that he, Sumbhooram, promised to support her, and enticed her in various way; that he wished to put the powder in the cooking-pot, and she went to wash the plates from which she and Sumbhooram had eaten; that on her husband's return home at two *gurries* of night she gave him that rice and some milk Gooroobaree had brought; after partaking of this food he became ill, suffered from vomiting and purging, and writhing from the pain, died at midnight. She continues, I did this at the instigation of my brother-in-law, and did not warn my husband. I have no powder left, there was very little: he put it all in the rice.

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My husband often beat me. Sumbhooram before attempted to entice me to this deed, but I would not agree.

Before the Deputy Magistrate of Nugwan the introduction of her confession is similar. Her reply to the foul proposal of Sumbhooram was, "Then who will protect me?" to which he said, "I will," and she answered, "You know." She admits she prepared the evening meal; that during the absence of her husband, they partook of it. Her mother-in-law first and then herself and brother-in-law together; that she went and washed the plates. and then they spent the time in each other's company until her husband's return.

That she then gave her husband the food that had been left for him, after eating it he began to complain, and she attributed the cause to the quantities of mangoes he had eaten. His illness became more and more aggravated, and he died at midnight. She admits criminal connection with her brother-in-law.

The confessions of Gooroobaree are to the following effect: that the prisoner Sumbhooram No. 13, is her *dhurmo bap,* sworn father; that he had criminal connection with the prisoner Jhatee, and being turned out of his house by his brother, the deceased, lived with her, this confessary, for a month. That four days before the 30th April, she saw something was tied in the corner of his *chudder;* that he at first refused to tell her what it was, but after reiterated solicitations admitted it was poison intended for his brother, but she was told to take care the poison did not touch her eyes or mouth, and she stuck it in the thatch. That yesterday he took it from her, and telling her to bring milk to his house, went home. She took the milk as directed; is in the habit of supplying milk at that house, but that she does not know how or when Sumbhooram gave the poison, nor did she open or see it.

The native doctor* who made the *post mortem* examination, is of opinion that the deceased died from the effects of white arsenic. He found the stomach empty, and patches of inflammation inside, shewing incipient gangrene. He was of opinion that extreme vomiting and purging must have taken place and caused death. No arsenic was found, but from the appearance he believes it was administered. The subject was otherwise in good health, and there was nothing to indicate cholera. This is amply corroborative of the rest of the evidence. But in such cases, native doctors should be required invariably to send the stomach and its contents for chemical examination.

* Wit. No. 20, Luchmeenarain Doss, native doctor of Nugwan, pages 46 to 48.

The witnesses of the defence support it in no degree; what they say is rather criminatory than otherwise.

The *futwa* convicts Sumbhooram of mixing poison with the food of which his brother was to partake, did partake and die;

and makes him liable to *seasut*. Jhatee of being an accessary before the fact; and Gooroobaree *alias* Jhatce of accessaryship both before and after the fact, and declares them liable to *tazeer*. In my opinion Sumbhooram is guilty of wilful murder, and Jhatee, prisoner No. 14, of being an accessary before the fact. I can see no difference in the criminality of her who gave the food to be eaten, and of him who threw the poison into it. Her guilty knowledge cannot be doubted. She distinctly stated to the Darogah, "I have noneof the poison, there was very little. he put it all in the rice." The Deputy Magistrate ought to have committed Jhatee for the higher offence. They both deserve to suffer death.

With the law officer's conviction of Goroobaree, prisoner No. 15, I do not concur. The manner of her relation of how she became aware of Sumbhooram's felonious intention is strained and very improbable, I do not trust it. Could I do so, her mere reticence will not make her an accessary before the fact, and there is nothing to prove that she became so after it. No criminality necessarily attaches to her delivering the milk, for she frequently supplied milk to that house. I would therefore acquit her.

Remarks by the Nizamut Adawlut —(Present: Messrs. B. J. Colvin and A. Sconce.) The circumstances of this case are that the prisoners Sumbooram and deceased were two brothers who were on bad terms with each other, and Sumbhooram being frequently turned out of doors in consequence, he has confessed that he determined to kill deceased, and for that purpose bought poison in Calcutta, which he took the opportunity of mixing with his brother's food, who was from absence, when the others ate, to take his meal last. Although the prisoner repudiates his confessions before the Police and Deputy Magistrate, in the Sessions Court, we see no reason to distrust the fact of their having been made freely and voluntarily, and the evidence of the native Doctor establishes that deceased did die from poison, while other witnesses prove that he ascribed his illness to having been poisoned by the prisoners, Sumbooram and Jhatee, in the presence of those who did not make any observation to the contrary, nor did the appearance of the corpse show symptoms of death by cholera, as alleged in the defence. We therefore concur with the Sessions Judge in convicting the prisoner, Sumbhooram, of wilful murder and in sentencing him to death.

We cannot, however, regard the act of Jhatee in the same light as the judge has done. It does not appear from her confession, and her statement is borne out by the confession of Sumbhooram, that she knew of the act of mixing the poison in the food of the deceased till after he had partaken of it; and it was only when the effects of the poison displayed themselves

1858. October 28. Case of SUMBHOORAM PURYA and others.

that Sumbhooram told her what he had done. Her conduct therefore only amounted to concealment of the deed or to accessaryship after the fact. We therefore convict her of this offence, and sentence her to seven years' imprisonment, with labor suited to her sex, in the zillah jail.

The judge proposes to acquit the prisoner, Musst. Gooroobaree and in this we concur with him, not that we think her relation of Sumbhooram's intention strained and very improbable, but because we think that no guilt is brought home to her. It is true that she admits that Sumbhooram placed with her the poison which he said was for the purpose of destroying his brother, but when he took it away from her charge she had no idea that it was to be employed on the occasion, when it was used, and for all she knew he might not employ it at all as purposed, nor did she know of its having been administered, till after deceased was taken ill and suffering from its effects. Likewise the milk which she took to the house, was not made the vehicle of its administration. Under these circumstances as neither accessaryship, whether before or after the fact, nor privity to the actual commission of the offence is brought home to Musst. Gooroobaree, we acquit her and direct her release.

The Court observe that the Sessions Judge has examined the witnesses to the confessions as to their contents, that is, the witnesses have been asked to detail what the prisoners stated. This is an erroneous practice and should be discontinued. The witnesses should only have been examined as to the fact of confession, the mode of its having been recorded, and whether it was given freely and voluntarily. They should then have been asked if they could attest the confessions on the record as those made by the prisoners, by recognition of their signatures and having them read to them.

PRESENT:

C. B. TREVOR AND H. V. BAYLEY, ESQS.
Officiating Judges.

GOVERNMENT AND OTHERS
versus
SAGOR MULL MARWAREE (No. 10,) SEODYAL MUNDER ALIAS SADHOO MANJHEE (No. 11,) KHAGA DUNDEE (No. 12,) HURLOL DUNDEE (No. 13,) AND CHUNDEE DUNDEE (No. 14.)

Bhagulpore.

1858.

October 30.

Case of SAGOR MULL MARWAREE.

Prisoners Nos. 10 and 11 were found guilty of embezzlement under Act XIII. of 1850 and Nos. 12, 13 and 14 of being accomplices to the said crime. Held on appeal, that as prisoner No. 10, the churundar, was a paid-servant entrusted with the goods of his master, the delivery of the goods to him did not transfer the possession to him, that in law remained with the master and owner: the misappropriation of them by the churundar took them out of the posses-

CRIME CHARGED.—Nos. 10 to 14, 1st count, embezzlement of property valued at 1800 Rs. or thereabouts, belonging to Sheochurn and Mohunlol Bhuggut, entrusted to them for delivery in Calcutta, such being under Act XIII. of 1850 a felonious stealing of the same; Nos. 12, 13 and 14, 2nd count, being accomplices to the said embezzlement; 3rd count, privity to the same.

CRIME ESTABLISHED.—Nos. 10 and 11, embezzlement of property valued at 1800 Rs. or thereabouts belonging to Sheochurn and Mohunlol Bhuggut, entrusted to them for delivery in Calcutta, such being under Act XIII. of 1850, a felonious stealing of the same; Nos. 12, 13 and 14, accomplices to the said embezzlement.

Committing Officer.—Mr. W. Ainslie, Magistrate of Bhaugulpore.

Tried before Mr. T. Sandys, Sessions Judge of Bhagulpore, on the 3rd June, 1858.

Remarks by the Sessions Judge.—A cargo of *ghee*, *kharee*, *nimuk* and wheat was shipped on 10th October last in charge of Sagor, prisoner No. 10, as *churrundar* on board of Sheodyal prisoner No. 11's boat, of which Khaga, prisoner No. 12, Hurlol, prisoner No. 13, and Chundee, prisoner No. 14, were boatmen, consigned on behalf of prosecutor's master to Acheyburam and Gungapershaud of Burra Bazar, Calcutta. The consignment not reaching Calcutta, led to enquiry, when the consigners despatched Puttee witness No. 1 and Rambuxsh, witness No. 4, the latter absent before this Court, to find out what had become of the consignment and sale of which by Sagor prisoner No. 10, in collusion with Sheodyal Manjhee, prisoner No. 11, and his boatmen the other prisoners Nos. 12, 13 and 14, they traced to Cutwa and Culna. Ramcoomar witness No. 5, purchaser of the portion of the cargo sold at Culna, deposes to his having done so from Sagor, prisoner No.

Evidence, and statements on both sides together with Sheodyal prisoner No. 11's written engagement or Satha No. 14.

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...sion of the master, the crime therefore of which he has been guilty is theft or larceny and not embezzlement.

Held also that the prisoner No. 11 who was the manjee of the boat, a simple carrier without the custody of the goods and who was an accomplice in the misappropriation of the property, is also guilty of theft and not embezzlement, as are also the remaining prisoners Nos. 12, 13 and 14. As therefore the prisoners were not convicted of theft but solely of embezzlement they are all entitled to their release.

Held generally, that Act XIII. of 1850 does not include with it acts which previous to the enactment were thefts; they remain as

10, under the name of Ramdial accompanied by Sheodyal prisoner No. 11, calling himself Sagor Mull Manjee. In like manner, the purchaser at Cutwa deposed before the police of that district to his having bought his portion of the cargo from one Ramdyal accompanied by the manjee and boat-people. This* witness, however, failed to attend before this Court. The boat itself is said to have been found abandoned, and was made over to prisoner No. 12, by Puttee, but what has become of it does not clearly appear.

Wit. No. 7, Narain Doss, 14th January, 1858, No. 36, transmitted with Darogah of Burdwan's report, 15th January, 1858, No. 33.

* Wit. No. 1, Puttee.

In the meantime the prisoners had quietly returned by land to their homes in this district, where all were apprehended, except Sheodyal, who, after some delay, appeared of his own accord. Their defences whether before the Magistrate or this Court are inculpatory of each other. They recognize the sales of cargo both at Cutwa and Culna. Sheodyal threw the blame on Sagor, who, in spite of his remonstrances, would effect the sales and having realized them disappeared, whilst Sagor himself knew nothing about them, having previously quitted the boat, which he left in charge of Sheodyal and proceeded to Calcutta, in his previous defences, because the boat had got aground, and before this Court, because he had fallen "sick." The pretence was also set up that Sagor held a small interest in the cargo and said he had a right to dispose of the cargo in the most advantageous market. But nothing of the kind is made out, but the very contrary by prisoner's own contradictory statements and guilty conduct. The boatmen, prisoners of course, side with their Manjhee, Sheodyal. The inculpatory statements on each other are in themselves equally lame and impossible the one as the other. Sagor Mull's witnesses know nothing in his favor, whilst Sheodyal's are little better and as worthless as his own defence. Four boatmen† deposed to Sheodyal's remonstrating with Sagor at Culna, but when asked how in that case Sheodyal did not prevent the sales, they could not tell.

† Wit. No. 13, Shunker Manjhee.
" " 14, Jowahir Manjhee.
" " 15, Jhubbun Manjhee.
" " 16, Soomrun Manjhee.

The Jury‡ unanimously convict the prisoners on the two first counts.

‡ Meer Inayet Hosein of Ooreur, zillah Monghyr.
Asghurally Selimpore, zillah Bhagulpore.
Reywutloll Bheer, Patna.
Ditto 2nd Ubhaie, Behar.

The case is conclusive against the prisoners both by their own admissions, their worthless defences, all the circumstances of the case and evidence for the prosecution, which is direct and positive against them, and which there cannot be the slightest reason to question in any way. A whole cargo is made away

with whilst in transit and the boat itself then abandoned. To all this each of the prisoners must have lent a willing hand, and in which as a matter of course, Sagor and Sheodyal must have been the principals. It was a breach of trust so often put in practice under various devices on the river, but more than ordinarily daring on the present occasion, calling for exemplary punishment. I convict the prisoners and sentence them as below.

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Sentence passed by the lower Court.—Nos. 10 and 11, each to seven years' imprisonment with labor and irons in banishment to another zillah, and under Act XVI. of 1850, to pay jointly and severally a fine of 1800 Rs. as compensation for the loss sustained by the prosecutor's masters, and Nos. 12, 13 and 14, each to three years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor and H. V. Bayley.) The prisoners were all charged with embezzlement under Act XIII. of 1850, and convicted of that crime. They appeal separately. Prisoner No. 10, the *churundar*, urges in his appeal, that the prosecutor's gomashtah offered him a 4 annas' share of the profits of a cargo about to go to Calcutta in the boat of prisoner No. 11, if he, prisoner No. 10, would withdraw a petition he was about to present in Court; that he accepted the offer, went with the boat, fell sick on the way, and made over the cargo to the Manjhee; that he, prisoner No. 10, was on his road to tell prosecutor the state of the case, when he was met by witness No. 1, and made over to the police. This prisoner adds that the witnesses for his defence were not examined and that the papers which would have shewn that he had 4 annas' share of the profits of the cargo were not looked into.

The evidence of the prosecutor and of witnesses Nos. 1, 2 and 3, clearly shews that prisoner No. 10, was the paid servant of the prosecutor and was entrusted with the exclusive custody of the cargo of prosecutor to be delivered by him at Calcutta. The boat with the cargo had no other cargo than that of prosecutor. The evidence of witness No. 5, clearly shews that prisoners Nos. 10 and 11, offered to sell the cargo and did sell some of it at Culna.

The prisoner in his defence at the foujdaree says that he left the boat as it got aground; and does not state that he had any share in the cargo; at the Sessions he says he left the boat because he was sick, and that he had a share in the cargo; and thus could sell for himself and sharers.

This defence is in no way substantiated by the witnesses whom this prisoner calls; all of whom we observe, were examined on the trial.

As this prisoner, No. 10, the *churrundar*, was a paid servant entrusted with the custody of the goods of his master, the delivery of the goods to him did not transfer the possession to him,

they have always been thefts and the law above cited includes only embezzlement by public officers, by clerks and private servants, breach of trust by private trustees, executors and persons holding a like fiduciary character with trust property; and also it would seem all fraudulent misappropriation of property by parties who having had previous lawful possession of the bailment by consent of the owner, obtained without fraud, do not fall within the legal definition of larceny or theft.

This Court looking to the nice distinction between theft and embezzlement under the Act, with a view of preventing the miscarriage of justice has prescribed that

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that in law remained with his master the owner; it follows that the misappropriation of them by the *churrundar*, took them out of the possession of his master and the crime, of which he has been guilty, is theft or larceny and not embezzlement.

Prisoner, No. 11, is the Manjhee of the boat. He contracted with the gomashtah of prosecutor's house by a writing *(lekhan)* or memorandum, to take down the cargo safely and to be personally responsible if it were made away with *(tuja-out)* or injured *(nuqsan ;)* he in short was only the carrier of the goods, and his contract was simply to convey in safety the goods, which were not in his custody, but in that of the *churrundar*. As then he was an accomplice in the misappropriation of the property, he equally, with the *churrundar*, was guilty of theft and not of embezzlement. Under the view expressed above, the conviction of the two prisoners, Nos. 10 and 11, of embezzlement cannot be sustained, and they must be immediately released.

When a party is committed for embezzlement under the Act, a separate count for theft should be added, so that if acquitted on one count, he might be convicted on the other. The Magistrate has not acted in accordance with this Circular, and the consequence is, the prisoners have been released. The Sessions Judge is therefore directed to bring the Circular to the notice of the Magistrate enjoining his strict attention to its requirements in future.

The remaining prisoners Nos. 12, 13 and 14, are ordinary boatmen. They, as little legally as the prisoners, Nos. 10 and 11, have been convicted of embezzlement; their crime, if any, is theft; and as they have not been charged with and found guilty of it, they are also entitled to their release.

The Court would observe that though some diversity of opinion exists as to the proper construction to be put upon certain Sections of Act XIII. of 1850, that law has never been interpreted to include with it, as breaches of trust, acts which before its enactment were theft; those acts remain, as they always have been, thefts; and in the law above cited are included only embezzlement by public officers, by clerks and private servants, breaches of trust by private trustees, executors and persons holding a like fiduciary character with trust property; and also it would appear, though on this point there must be deemed to be considerable doubt after the construction put upon the Act by the learned Judges of the Supreme Court in the case of Queen *versus* Mayer (Taylor and Bell's reports, vol. II. page 30,) all fraudulent misappropriations of property by parties who having had previous lawful possession of the subject of the bailment by consent of the owner obtained without fraud, do not fall within the legal definition of larceny or theft. Such being the law, this Court, looking to the nice distinction between theft and embezzlement under the Act, with a view of preventing the miscarriage of justice, has prescribed in its Circular Order, No. 75, of 12th December, 1851, that when a party is committed for embezzlement under the Act, a separate count for theft should also be added; so that, if acquitted on one count, he might be convicted in the other; in the present case this, by an oversight of the Magistate, has not been done; and the result is

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that all the prisoners have, in this case, been acquitted. The Sessions Judge is directed to bring the Circular Order above cited to the notice of the Magistrate; and to enjoin his strict attention to its requirements in future.

SUMMARY CASE.

OCTOBER,

1858.

SUMMARY CASES.

October 1858.

PRESENT:

C. B. TREVOR and H. V. BAYLEY, Esqs.,
Officiating Judges.

GOVERNMENT and RUTTO BEWA
versus
RECABDI GHAZI.

Jessore.

1858.

October 7.

Case of RECABDI GHAZI.

Indictment quashed, as it appears from the evidence of the medical officer that the deceased did not die of the beating which the prisoner gave her, and he is therefore not guilty of culpable homicide. As however it would seem that in the opinion of the Sessions Judge there is evidence enough to support the charge of wilful murder, the prisoner should be committed on that charge, and the Sessions Judge is di-

CRIME CHARGED.—Culpable homicide of Gowri Bebee.

Committing Officer.—Mr. E. W. Molony, Magistrate of Jessore.

Tried before Mr. W. S. Seton-Karr, Officiating Sessions Judge of Jessore, on the 8th of September, 1858.

Remarks by the Officiating Sessions Judge.—The prosecutrix is the mother of the deceased, but beyond deposing that the prisoner is naturally of a violent temper and is always quarrelling with his wife, she throws no light on the actual circumstances of death.

The evidence to the fact of beating is that of witnesses, Nos. 1 to 6. They agree in stating that the prisoner returned from work about 12 o'clock in the day, when he had a quarrel with his wife because she had not got his meal ready; that he beat her on the back, and held her down forcibly, whereupon she cried out; that the daughter of the deceased, a young girl of about eight or nine, came up and assisted her mother after the prisoner had left her; that the deceased remained in a weak state all that day, and that next morning they heard that she was dead; and that the prisoner is naturally very hot-tempered. Most of the witnesses were working at the earthen-floor of the house belonging to witness, No. 5, Gopal Sirdar, and were in a position to hear and see what passed. Their evidence tallies, and is trustworthy, but it is remarkable that they all speak of the beating as much slighter than it is incontestibly proved to have been, as the deposition of the Civil Assistant Surgeon will show. The little daughter of the deceased, witness, No. 7, who had spoken out before the Moulvie who went to investigate the case, as to the beating, resolutely refused in the Sessions Court, to say anything except that her mother had committed suicide by hanging herself. She had evidently been tutored by the prisoner or by his mother to adopt this line.

1858.

October 7.

Case of RECABDI GHAZI.

For the evidence of the Civil Assistant Surgeon shows that the beating must have been severe, bruises and extravasated blood being found on the scalp, back, neck, loins, and even on the abdomen and knees. Considerable force must have been exerted, and, in all probability, some stick or blunt weapon was employed. But this beating, though more severe than the witnesses would make out, was not sufficient to cause death, which *was* caused by pressure on the windpipe, the face and eyes presenting all those appearances which usually result from strangulation, though there was not a trace of a rope outside the neck, nor had the tongue protruded as it would have done had the woman hung herself. The woman was quite healthy otherwise, and there was no trace of disease about her, such as the prisoner hinted at before the police or the Magistrate. The witnesses to the *sooruthal* also speak to the marks of severe beating. But the medical evidence is, obviously, of the greatest importance in a case like this.

rected to give orders accordingly and proceed on the new trial on that charge in the usual course, taking care to have all the witnesses re-examined on the charge of murder as to the facts in detail, and a fresh defence taken from the prisoner.

Witnesses Nos. 12 to 16, saw the deceased, towards evening, lying in a very weak state, and heard, either from herself or from the little girl, No. 7, that the prisoner had beaten her because his rice was not ready.

Witnesses Nos. 17 to 19, heard the prisoner admit to the chowkeedar that he had beaten his wife, but beg this functionary to save him and to say that deceased had committed suicide. The prisoner applied to the witnesses for the same purpose, and they mentioned the fact to the mohurrir of the thannah when he came to the village.

The prisoner, before the Sessions, admitted that he had struck his wife twice, but said that she had afterwards hung herself for shame; and that ants had produced the appearances seen on the corpse, which is simply impossible. He called three witnesses who knew nothing whatever.

The Chowkeedar of the village reported the death as one of suicide by hanging, though he admitted that he came away rather in a hurry and did not look to see if there were marks outside the neck. When the mohurrir went to the village he found one party asserting the death to be caused by beating, and another imputing it to suicide. But it is quite clear that he was then unable to obtain proofs of either assertion, and the Darogah in the final report said that he could get no eye-witnesses to the beating, which, from the marks, he fully believed to have taken place. On this, the Magistrate deputed the Moulvie to investigate the case, and, on his arrival, the eye-witnesses, who had almost all kept out of the way through fear, came forward and deposed to what they had seen.

There is not a shadow of proof that the woman committed suicide. The medical evidence precludes any idea of the sort, and there is no evidence that the woman was found or seen

hanging by any one, while it is quite impossible that a woman in the weak state she was seen in by credible witnesses, could have hung herself, especially in the small cooking-shed where the prisoner dragged her. 1858. October 7. Case of Recaudi Ghazi.

There is direct evidence to the beating; and though the witnesses speak of it as slighter than it really was, they, with curious inconsistency, all say that when they heard of the death next morning, they at once imputed it to the blows, and rejected any idea of suicide. Witness No. 1, Koresh Mahommed, expressly says that the prisoner called him early and told him of the death, when the witness went and saw the body, and the prisoner at that time invented a story of suicide by hanging.

I agree with the remark made by the Magistrate that the witnesses have not deposed to the full extent of the beating, and I am not at all satisfied that something more did not take place during the night of which no witness is aware, or if aware, will not explain.

Because, what are the facts *incontestibly* proved, and what legitimate presumptions may be drawn from them?

The prisoner comes home in a bad temper, and has a quarrel with his wife, whom he beats, though not perhaps with any malice aforethought nor with any previous intention of doing her any deadly injury. Still, the woman lies in a weak and helpless state till the evening, while her husband (see evidence of No. 14,) walks up and down and pays her no attention. In the morning she is reported to be dead, though it is pretty clear that the beating alone did not kill her, and a story of suicide is circulated, of which there is neither probability nor proof. These facts being proved, it seems to me a very natural and probable conclusion from them that, during the night, the prisoner must have inflicted some further injuries on his wife either by squeezing or pressing her throat from which she died, or that he must have so squeezed her at the time of the beating that very little more violence at any time was quite sufficient to kill her; and, considering the medical evidence, I would adopt this the more readily because of the difficulty of proving the fact of squeezing the throat by more positive evidence, and of the obvious facility for the prisoner of shewing that death was owing to suicide, if suicide there had been, on this I would refer to the doctrine of violent and probable presumptions clearly laid down in Archibald's pleading and evidence, page 202.

I am even of opinion that there was enough to make the charge one of wilful murder, because, though there was no malice before the beating, there was malice afterwards in his treatment of her, and such treatment as could only have proceeded from a bad heart.

The Jury unanimously found the prisoner guilty of the crime charged, and I agree with them.

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On reference to precedents I find, that fourteen years' imprisonment has been usually awarded in such cases by the Nizamut Adawlut, though imprisonment for life has been given in aggravated cases.

I consider this decidedly an aggravated case. The treatment of the deceased, on the slightest provocation, was very severe. The conduct of the prisoner subsequently indicates a thoroughly bad spirit. I would inflict on him the heaviest sentence of which the law admits, and recommend that he be sentenced to transportation beyond seas with hard labor for life.

Resolution by the Nizamut Adawlut.—(Present: Messrs C. B. Trevor and H. V. Bayley.) The Court observe that the evidence for the prosecution, especially that of the Civil Assistant Surgeon, clearly shows that the deceased did *not* die of the beating she received from the prisoner. The Officiating Sessions Judge concurs in this, and remarks "though it is pretty clear that the beating alone did not kill her, and a story of suicide is circulated of which there is neither probability nor proof. These facts being proved, it seems to me a very natural and probable conclusion from them that during the night the prisoner must have inflicted some further injuries on his wife, either by squeezing or pressing her throat, from which she died, or that he must have so squeezed her at the time of the beating that very little more violence at any time was quite sufficient to kill her; and, considering the medical evidence, I would adopt this the more readily because of the difficulty of proving the fact of squeezing the throat by more positive evidence."

The Officiating Sessions Judge concludes by expressing his opinion "that there was enough to make the charge one of *wilful murder*," and by convicting the prisoner of *culpable homicide*. The testimony of the medical officer in regard to the beating is that of the blows "none were sufficient of themselves to cause death. But the face was much swollen, the veins being apparent through the skin, the eyes were much congested, but the tongue did not protrude, as it generally does in hanging; and consequently I infer the death to have occurred by strangulation after the beating. The strangulation may have taken place some time afterwards. There was no mark whatever of a rope on the neck, such as must have been there, had the death really resulted from hanging; force must have been used both in the beating and strangling process."

The above extracts show that the deceased did not die of the beating. Therefore the prisoner is not guilty of the culpable homicide of the deceased arising from the beating; and of that and that alone has he been charged and convicted.

But, on the other hand, if there be sufficiently strong presumptive evidence of strangulation of the deceased by prisoner,

as intimated by the Officiating Sessions Judge, or other evidence of that fact, the charge should be wilful murder, and the prisoner should be tried on that charge; and this he has not been.

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October 7.

Case of RECABDI GHAZI.

The Court therefore quash the proceedings and direct that the prisoner be charged with wilful murder and tried upon that charge.

In giving this instruction, the Court refer the Officiating Sessions Judge to the precedent of this Court dated 3rd September, 1857, part II. volume 7, pages 235-7, case of Jogee Munnoo, Midnapore, and (to use the words of the instructions in that case) "direct that the Sessions Judge cause him (the prisoner) to be committed on a charge of wilful murder, when he will proceed on the new trial on that charge in the usual course, taking care to have all the witnesses re-examined on the charge of murder as to the facts in detail, and a fresh defence taken from the prisoner."

The Court have to add that the witnesses should be examined as to whether any and what persons (besides the prisoner) had access to the deceased, from the time of the beating to that of her death, and upon all circumstances which can tend to throw light on the facts and occurrences in the case during that interval.

REGULAR CASES.

NOVEMBER,

1858.

REGULAR CASES.
NOVEMBER 1858.

PRESENT:
H. V. BAYLEY, ESQ., *Officiating Judge.*

GOVERNMENT AND JOOGUL KISHEN KOOND

versus

SULLOO KHAN (No. 1,) AINOODEEN (No. 2,) TAHER MAHOMED (No. 3,) KORBAN (No. 5,) SUMMIROODEEN ALIAS SOMWEE (No. 6,) FYZUR ALLY (No. 7,) AND BABUR ALLY (No. 8.)

Backergunge.

1858.

November 4.

Case of SULLOO KHAN and others.

Prisoners convicted of dacoity. The evidence to the finding of the property bonâ fide with the prisoners being clear and unshaken, and they being unable in any way to rebut the presumption of their guilt based upon this fact. The confessions to the Police and Magistrate set aside as untrustworthy, and given under ill treatment of some of them, and fear.

CRIME CHARGED.—1st count, dacoity attended with beating the prosecutor and breaking two of his teeth, and carrying off property valued at Co.'s Rs. 1337-12; 2nd count, knowingly and wilfully receiving and keeping the property obtained by dacoity.

CRIME ESTABLISHED.—Prisoners Nos. 1, 2, 3, 5, 6 and 8, 1st count, dacoity attended with beating the prosecutor and breaking two of his teeth. Prisoners, Nos. 1, 2, 3, 5, 6, 7 and 8, 2nd count, knowingly and wilfully receiving and keeping the property obtained by dacoity.

Committing Officer.—Mr. H. A. R. Alexander, Magistrate of Backergunge.

Tried before Mr. F. B. Kemp, Sessions Judge of Backergunge, on the 3rd June, 1858.

Remarks by the Sessions Judge.—I tried this case alone under the provisions of Act XXIV. of 1843.

The prisoners Nos. 1, 2, 3, 5, 6 and 8, confessed both before the police and before the Magistrate; these confessions were, in my opinion, voluntary, and they have been sufficiently attested. I did not observe any mark of violence on the persons of the prisoners. A considerable quantity of property was either produced by, or found in, or near, the houses of the prisoners Nos. 1, 2, 3, 5, 6, 7 and 8.

No. 7, confessed before the police and he resides in the same house as prisoner No. 8.

The prisoner No. 1 cites no witnesses to his defence. The witnesses for the prisoners Nos. 2, 3, 5, 6, 7 and 8, do not depose to any thing materially in favor of the prisoners.

The prisoners are clearly guilty of dacoity and of receiving and keeping property obtained by dacoity and they have been sentenced as shewn in Column 12 of this statement.

1858.

November 4.

Case of SULLOO KHAN and others.

Sentence passed by the lower Court.—Prisoners Nos. 1, 2, 3, 5, 6 and 8, each to be imprisoned for ten years with labor and irons. Prisoner No. 7, to be imprisoned for seven years with labor and irons.

Remarks by the Nizamut Adawlut—(Present: Mr. H. V. Bayley.) The prisoners appeal in one general petition, although some of them urge grounds special to themselves and to their own cases.

The pleas in the *general* appeal urged by all, are:—

I. That the confessions to the police were extorted by beating and burning the prisoners; and by restraint and threats against their female relatives; and that the witnesses prove this.

II. That the confessions to the Magistrate were made partly from fear of the burkundazes sent by the Darogah with the prisoners to the Magistrate; partly from hopes of escape held out, if they repeated their confessions; and partly from the knowledge of the prisoners that being separated from their female relatives, the latter were liable to ill-treatment by the police in the mofussil.

III. That the search for stolen property was not duly conducted; i. e. by respectable villagers being placed around the premises at the time of the search, but that the police put in the property in each place where it was found, and then taking it thence, shewed it to the witnesses, as if it had been found *bonâ fide* with the prisoners.

IV. That the native doctor at the Sessions stated the scars on the prisoners not to be those of recent burns; but without giving reasons or data for his statement.

Prisoner No. 2, Ainoodeen, urges *specially*, that there never was a dacoity at all in prosecutor's house; that he, (prisoner No. 2,) had an intrigue with the wife of witness No. 1, the son of the prosecutor; that therefore the charge was brought against him; but that as such a charge of dacoity could not avail against a single individual, seven other persons were dragged in promiscuously as prisoners, in order to make up a sufficient number to support the false charge of dacoity. Further that this prisoner denied the charge on the 29th March before the police, but that this denial was not recorded.

The dacoity occurred on the night of the 27th March. On the 28th, witness No. 1, the son of the prosecutor, gave information to the police; but not stating that his father or any one had recognised any of the dacoits; and he added that his father was ill and unable to come himself. On the 29th, the prosecutor gave his statement on oath; saying that he recognized Meah Khan, Dowlut Mullick, Kanaye Mullick and prisoner No. 2, Ainoodeen. On the same day the police Darogah reports that the prosecutor was weak and ill when he made the above statement; but had *verbally* informed him afterwards when he was better that he

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had recognized by the moon-light prisoner No. 2, and Alif. The prosecutor stated to the Magistrate that he had recognized prisoners Nos. 1 and 2 by their voices; and at the Sessions that he had recognized prisoners Nos. 1, and 2, and Alif by their voices.

Witness No. 1, the son of the prosecutor who was as close to the dacoits at the time of the dacoity as his father, deposes that he recognized no one, and no other witness deposes in support of the prosecutor's alleged recognition.

Witnesses Nos. 52, 53, 54, 55, and 56, clearly prove the occurrence of the dacoity and corroborate prosecutor's statements in regard to that, and in regard to his property having been plundered, and himself bound. These witnesses came up immediately after the occurrence of the dacoity; and witness No. 56, apprehended prisoner No. 1, in a jungle, having suspected him, as he had absconded.

The property, articles No. 11 to 105, was found in the houses of the prisoners Nos. 1, 2, 3, 5, 6, 7 and 8, and duly and fully identified as prosecutor's by him, his son witness No. 1, and other independent evidence. The evidence to the finding of the property *bonâ fide* with the prisoners is clear and unshaken It goes to shew that the prisoners themselves in the presence of these witnesses pointed out where it was.

The defence of the prisoners is to the same effect as their appeal; i. e. that their confessions (except prisoner No. 7, who denies throughout) were extorted by threats and ill-treatment to themselves and their women; and that they bore at the trial the marks of the burning. The Sessions Judge, however, on this point records: "The confessions were, in my opinion, voluntary and they have been sufficiently attested. I did not observe any mark of violence on the persons of the prisoners." The prisoners in their appeal speak of their examination in Court by the native doctor, but no deposition of this officer is on record (as it should have been if he did make any such examination) or is alluded to by the Sessions Judge. The witnesses to the confessions to the police, Nos. 6, 7, 8, 9, 10, 11, 12 and 13, depose generally that they were free and voluntary, but with these exceptions, witness No. 10, says he heard the Darogah had beat the prisoners, Nos. 3 and 4. Witness No. 13, says prisoner No. 4, (released) was beat; not No. 3; that the Darogah took the wife of prisoner No. 6, into his (the Darogah's) boat; and that the hands of all the prisoners were tied. The Sessions Judge makes no reference to this evidence in his remarks. The witnesses for the defence speak to character, but do not directly support the plea of the confessions having been extorted by violence. The witnesses called by Ainoodeen prisoner No. 2, say, there was a general rumour of his intrigue with the wife of the prosecutor witness No. 1;

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but he did not know the fact otherwise. This prisoner's plea that his denial of the 29th March was not recorded is untrue; for the record shews the contrary, and that *after* prisoner No. 13, (Suloo Khan's) apprehension and confession, this prisoner confessed. But looking to the evidence above detailed of witnesses Nos. 10 and 13, I cannot trust the confessions, because I see no reason to doubt that evidence, (which is for the prosecution,) and if the Darogah beat one prisoner, and kept the wife of another in his boat, it cannot be safely supposed that similar evil influence and coercion were not used in regard to the other prisoners. Then the repetition to the Magistrate cannot be safely trusted, if, as the above evidence shews to be most probable, the females of the prisoners were interfered with and kept under the control of the police. Further, the original defect in the confessions to the police must be regarded to a certain extent as affecting the trustworthiness of the confessions to the Magistrate.

The question now remains whether irrespective of these confessions on which the charge of *dacoity* is admitted, that charge can be otherwise sustained. In regard to the confessing prisoners Nos. 1, 2, 3, 5, 6 and 8, I think it can. The rule of evidence on the point is, that when the possession of the whole or a portion of the stolen property is clear, it is sufficient, even standing alone, to assume the shape of a violent presumption of the truth of the charge of robbery, and to cast on the accused the burden of rebutting that presumption, by shewing that he or they did not wrongly come by the property, especially in a case, where, as in this, there is no doubt of the dacoity having occurred, and the property found having been plundered therein.

Acting on this rule I convict the prisoners Nos. 1, 2, 3, 5, 6, 7 and 8, of dacoity, and uphold the sentences passed on them. I convict No. 7 of dacoity, whereas the Sessions Judge has only convicted him of receiving stolen property knowing it to be stolen. I do so, because the rule of evidence cited equally applies to him. At the same time of course, I cannot under Section IV Act XXXI. of 1841 enhance the punishment inflicted by the Sessions Judge as for the lesser crime.

I reject all the appeals.

The conduct of the Darogah should form the subject of special enquiry by the Magistrate under sanction from the Superintendent of Police, with reference to the above remarks.

The Sessions Judge will be good enough to state if the native doctor made any statement in regard to the marks on the prisoners as alleged by them in their appeal; and if so, why such statement was not recorded?

PRESENT:

G. LOCH AND H. V. BAYLEY, ESQS., *Officiating Judges.*

GOVERNMENT

versus

GUDADHUR BAGDEE.

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Prisoner released as one of the approver witnesses had not mentioned his name in his original confession: and the evidence of the other was rejected and was not satisfactorily corroborated by other independant evidence.

The necessity of having complete and satisfactory corroborative evidence to support the evidence of approvers pointed out, particularly in cases where only one specific act of dacoity is charged.

CRIME CHARGED.—1st count, dacoity on the night of the 21st February, 1847, on the house of Fazley Ahmud of Chuck Hajee, thannah Jahanabad, zillah Hooghly; 2nd count, having belonged to a gang of dacoits.

Committing Officer.—Mr. T. E. Ravenshaw, Commissioner for the suppression of dacoity at Hooghly.

Tried before Mr. E. Jackson, Officiating Additional Sessions Judge of Hooghly, on the 21st September, 1858.

Remarks by the Officiating Additional Sessions Judge.—The prisoner pleads *not guilty*. He was apprehended on the 7th August, 1858, warrants having been issued for his arrest several months previously, which he had evaded by absconding from his village Tello in thannah Rajbulhat, zillah Hooghly, and concealing himself in the neighbourhood of Howrah.

Witnesses Nos. 1 and 2, approvers, give evidence implicating him in the dacoity at Chuck Hajee on the 21st February, 1847. Their original confessions were recorded on the 6th March, and 12th May, 1858 respectively, before the prisoner's arrest. The approver-witness No. 1, Dwaree Bagdee did not in his confession, mention the name of Gudadhur Bagdee or of his brother Chidam Bagdee Chowkeedar as being present at this dacoity, in fact their names do not appear in his confession to any dacoity. I observe also that the name of approver-witness No. 2 is also not given in his original confession. On cross-examination on these points, he attributes the omissions to forgetfulness. The Dacoity Commissioner admits this excuse on the ground that when the prisoner was arrested and brought before him, he was placed among strangers and identified by both approvers, and witness No. 1's recognition of him, then was "clear and distinct and every care was taken to prevent the possibility of collusion." I am of opinion that this witness Dwaree Bagdee's deposition cannot be considered good against the prisoner. The whole of the proceedings of the dacoity commissioner turn on the original confession of the approver. This is taken down or should be, with the greatest care and caution, and every enquiry and examination should then be made to ascertain from him the names of every member of the different gangs with which he committed dacoity. While

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recording it, the approver is kept separate and not permitted any opportunity of communication or collusion with other approvers. As a general rule, he must not be allowed in his subsequent depositions on oath to go beyond this confession. Although, however, I would not admit the witness's plea of forgetfulness as regards the prisoner, I would allow witness No. 1's confession to be so far corroborative of witness No. 2's confession and deposition as to the rest of the gang and generally as to the circumstances of the case, so far as he does relate them. The very discrepancy shows there was no collusion.

Witness No. 2's deposition being, in accordance with his original confession may, so far, be considered good against the prisoner. It remains to be considered how far it is corroborated by the record of the case.

The approvers state that one of the Tello Bagdees was the spy on the occasion, and that it was said that the Mussulman in whose house it was committed, had lately brought a quantity of property and cash from Calcutta. From the deposition of the owner of the house and the list of property he gave in, it would appear that he deposed to 5000 Rs. in cash and 2000 Rs. worth of ornaments and other articles being plundered. I believe this to be an exaggeration, but the approvers do say that they obtained a large booty. Witness No. 1 saying that for his own share alone he received Rs. 200.

Page 5.

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Suspicion at the time fell upon the durwan of the house, Gholamee Bagdee of Batanol, and with good grounds apparently. This Gholamee is mentioned in the confessions of both approvers. The dacoity occurred on the 21st February and on the 23rd, he gives a deposition to the police, stating that he recognized among the dacoits approver-witness No. 2, Seetul Bagdee, approver-witness No. 1 Dwaree Bagdee and his brother Bhoja Bagdee, whom he then calls Gorachand Bagdee's sons-in-law, two Bagdees, of Moishnan, he subsequently gives their names, clearly shewing that it was to these two he alluded, and also the prisoner Gudadhur Bagdee and his brother Chidam Bagdee whom he particularly points out as having bound him, he mentions also seven other names which do not tally with the approver's statements. Kishtomohun Sircar Phareedar deposed to the police, that he had on the night of the dacoity, seen the prisoner Gudadhur and his brother Chidam going about in a suspicious manner. On the 2nd March, the Darogah sent in Gholamee Bagdee as a prisoner, reporting that the whole of the enquiry made by him shewed him to be one of the dacoits: and on the 3rd March he

Pages 14 and 15.

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Pages 60 to 66.

gave a confession to the Magistrate in which he ackowledges complicity in the dacoity and again charges the Moishnan Bagdees with the crime this time by name, but states that before the Police he introduced the other names at the instigation of the owner of the house, because they were suspected parties. The Deputy Magistrate recommended the commitment of Gholamee Bagdee, Bhojohuree and Dwaree Bagdee and one Shantee Dollya also named by the approvers to the Sessions, but the Magistrate directed their release.

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Approver witness No. 2, further implicates the prisoner in a dacoity in Joysingchuck, but this is not specially charged, and I have therefore not gone particularly into it. The prisoner's name is in the approver's original confession to that crime, and his confession regarding certain Bagdees of Tello being among the gang, is borne out by the confessions of persons arrested on the spot at the time, but the prisoner's name does not appear in these.

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The prisoner urges in his defence that he was a *malpaik* in the zemindar's cutcherry at Tello and as such, was called on to assist the police in the arrest of the approvers and their confederates, after the Telpoor and Joysingchuck dacoities, for which they are now paying him out. His witnesses give him a good character as far as they go.

I am of opinion that the deposition of approver-witness No. 2, is borne out generally as to the facts of the dacoity and the gang which committed it by approver witness No. 1's confession, and as to the complicity of the prisoner by Gholamee Bagdee's first statement to the police, in which I place more reliance than in his second statement to the Magistrate which, from the way it implicates respectable men, enemies of his master, shews that it was prepared at the latter's instigation. I would therefore convict the prisoner and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. G. Loch and H. V. Bayley.) The prisoner is charged with having committed a dacoity in the house of Fuzul Ahmed, Chuck Hajjee Shona, on 21st February, 1847, and of belonging to a gang of dacoits. Two approvers depose to the fact of his having accompanied them when the dacoity in Hajjee Shona was committed.

The first approver, Dwari Bagdee, witness No. 1, in his confession to the Commissioner of dacoity, does not mention the name of the prisoner as among the robbers, and his testimony as regards the prisoner must be at once rejected. The second approver Seetul witness No. 2, mentions the prisoner's name, and

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the Sessions Judge considers the evidence of this witness corroborated by the statement made by one Golami Bagdee a servant of the party robbed, who, on the day subsequent to the dacoity, informed the Darogah that he had recognized the prisoner among others at the time of the dacoity; Golami Bagdee was suspected of being an accomplice in the dacoity, and was sent into the Magistrate to whom he made a confession utterly inconsistent with his former statement. In it he charged other parties with having committed the robbery and omitted the name of Gudadhur Bagdee and others formerly charged. The Sessions Judge considers the statement of this man, made to the Darogah, may be relied upon as true; but we think that owing to the apparently wilful contradictions made by Golami, neither of his statements can be trusted, and as no other corroboration of the approver's evidence has been advanced, we think it alone insufficient for the conviction of the prisoner and direct that he be released.

In the 7th para. of his letter, the Sessions Judge states that the approver No. 2, implicates the prisoner as being concerned in the Jysing Chuck dacoity; but no reason is assigned by the committing officer why that dacoity was not entered in the calendar as a separate count. The Court observe that in several trials, lately submitted for their orders, the prisoner or prisoners have been charged with the commission of only one dacoity, while either other cases, mentioned by the approvers, are omitted, or the specific crime charged is the only dacoity in which the prisoner is known to have been engaged. Now, though it may be possible to convict a prisoner on the general count where only one specific act of dacoity is proved against him, yet it must be obvious that to do so, the corroborative evidence in support of the evidence of the approvers must be very complete and satisfactory, both as to the specific and the general count and the charge must not, as in the present case, rest on the testimony of one approver uncorroborated by any independent evidence.

PRESENT:

A. SCONCE, Esq., *Judge* AND C. B. TREVOR AND G. LOCH, Esqs., *Officiating Judges.*

GOVERNMENT AND SREEMUTIA BHYRUBEE

versus

NOBOO PATUR (No. 8,) MUDHOO GWALLA (No. 9,) SREEMUNT BERA (No. 10,) AND JOODHISTEER ADOCK (No. 11.)

Midnapore.

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Case of NOBOO PATUR and others.

Four prisoners convicted as accomplices in the commission of wilful murder; of whom two have been sentenced capitally and two to be imprisoned in transportation for life in conformity with the opinion of two Judges for the reasons severally given by them, while a third Judge would have sentenced all four to be hanged.

CRIME CHARGED.—Wilful murder of Mussamut Soogunda Bewa by strangulation.

Committing Officer.—Mr. J. M Lowis, Magistrate of Midnapore.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 9th August, 1858.

Remarks by the Sessions Judge.—The prisoners plead *not guilty* and set up *alibi* and extortion of their confessions in defence.

The circumstances of the case are briefly as follows:

The deceased Soogunda, a widow, appears to have done good business in the rice trade, and to have been assisted in it by one Munnoo Panjah of the adjoining village of Rai Rainachuck. They became too intimate, and a criminal intercourse was the result.* It would appear from the evidence that Munnoo Panjah's wife Gooree, a witness for the defence, had become aware of this circumstance and, stung with jealousy, determined to get rid of her enemy; with this purpose, in Phalgoon last, she proposed to cancel a debt of eighteen Rupees† due to her by the prisoner No. 8, Naboo Patur if he would procure a "*goonin*" (sorcerer) to effect her purpose. Whether anything was done in pursuance of this wish is not divulged. But on the 25th Choit or 5th April, Soogunda went to the market of Belia Ghat with a hundred rupees to purchase rice‡. The prisoners at the instigation of Gooree watched for her return at Munnoo Panjah's house. They followed her after she had passed over a *khall* in the vicinity, rushed upon her, knocked her down, and by strangulation and other foul means there and then killed her; and

* Witness No. 16, Sreemotee Bullchee, pages 36 to 39.

† Confession of Naboo Patur, prisoner No. 8, before police, pages 107 to 108.

‡ Bhyrubee, prosecutrix, pages 4 to 5.

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stripping the ornaments and clothes off her person, carried the body and deposited it in some brushwood jungle near the tank of Beem Sawant in Ram Gopal *alias* Bamunchuck.*

The prosecutrix being uneasy at her sister's prolonged absence, went at two *gurries* of the night to the house of Madoo Majee of Rai Rainachuck, where she learnt from the women that Soogunda had passed on homewards after depositing some *pawn* leaves she had brought for them from the market.† The prosecutrix then went home, but not finding her sister, returned to Madoo Majee's whom she found this time, and induced to accompany her in search for the missing woman. They went to one Bullubee's, witness No. 16, who lives near to Munnoo Panjah's, and enquired from her; she appeared much confused and hesitatingly mentioned that the prisoners had been seated in consultation at Munnoo Panjah's that evening:‡ it is doubtful whether she said anything further then, but she became more communicative to the Darogah; and before him, the Magistrate, and this Court, deposes to having seen Soogunda pass by her house homewards, and cross the *khall;* that the four prisoners of this trial and also Munnoo Panjah's wife followed her into the *maidan*, rushed after and seized her. She turned away into her own house; a storm came on, and she saw no more. There is no reason to doubt the testimony of this woman; she was either a servant of, or occasionally employed in job work at Munnoo's house, and is very unlikely to have given false testimony against his wife.

The suspicions of the prosecutrix were at once directed to Munnoo's wife. She asked for her sister there, but no other steps could then be taken against her; so, after an ineffectual search during the greater part of the night, they retired to their respective homes.

At day-break, as the prosecutrix was again proceeding to Madoo Majee's, she saw in the bed of a dry tank, belonging to Beem Sawont, to the west of, and not far from the road, a human body and found it was Soogunda's. The stomach and other parts had been eaten by animals, but the face and chest were untouched. Immediate information was sent by the chowkeedar§ to the thannah and the police Darogah arrived at noon.

* Confessions of prisoners Naboo Patur No. 8, pages 105 to 110.
Modhoo Goronia No. 9, pages 99 to 104.
Sreemont Bera No. 10, pages 111 to 116.
Joodhisteer Adock No. 11, pages 93 to 98.

† Bhyrubee, prosecutrix, page 5.

‡ Bhyrubee prosecutrix, page 5.
Madoo Manjee witness 18, page 40.
Bullobee witness No. 16, page 36.
Goluck Boowah witness No. 19, page 46.
Narain Mytee witness No. 20, page 50.

§ Wit. No. 20, Narain Mytee, page 50.

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Munnoo Punjah's wife "Gooree" and the prisoners of this trial were arrested. The former has not been committed for trial; but the others fully confessed their active participation in this murder, both before the police, and the Deputy Magistrate of Tumlook.

The substance of those confessions is, that the four prisoners assembled at Munnoo Panjah's by the desire of his wife, to way-lay Soogunda, that she passed, and crossing the *khall* got into the *maidan;* they and Munnoo's wife followed.

Two took a circuit through the jungle to head her; three, viz. Munnoo's wife, Mudhoo Gwalla prisoner No. 9, and Joodhisteer No. 11, followed behind their intended victim. The prisoners first seized her, then the other two came up, and joined in the attack. Munnoo's wife is said to have taken the most active part, to have seized, and thrown her over, and nearly throtled her to death. One confessary states that she rubbed her face on the ground. The others seized her arms and legs, held her down, and finished the foul deed by squeezing the breath out of her body. They then disposed of it as above stated. The spot of the murder was pointed out and was four *russees* from Munnoo's house.

The local inquest shows the body to have been found about one *russee* distant west from Beem Sawont's and about ten or eleven *russees* from Munnoo Panjah's house. The face of the corpse was entire, though parts of the body had been eaten.

The confessions of the prisoners both before the police and the Deputy Magistrate have been proved to have been voluntary, and there is nothing to induce a doubt of their truthfulness.

The circumstantial evidence of the witnesses* fully corroborates them; and the evidence for the defence either breaks down, or is altogether inconclusive and unsatisfactory. Nothing exculpatory is proved thereby. The medical testimony proves the mangled state of the corpse when it reached the Sub-assistant Surgeon; but the face, head and back were perfect and one limb and a portion of the others remained. Deep marks of ecchymosis were found on the face, the nose had been depressed by violence applied to it, and there were bruises and contusions on the back and neck.

* Wit. No. 16, Sreemunt Bullabee, pages 36-39.
,, ,, 18, Madoosoodun Majee, pages 40-45.
,, ,, 19, Goluck Bhooen, pages 46-48.
,, ,, 20, Narain Mytee, pages 49-51.

The medical witness states, that the violence about described might have caused death, but that owing to the absence of the thorasic and abdominal organs he cannot give an opinion as to the actual cause of death.

The *futwa* of the lower officer convicts the prisoners of being accomplices, and declares them liable to *seeasut*.

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In my opinion there is no doubt they each took an active part in the murder of Soogunda and were principals in the first degree.

There is not, in my apprehension, a single extenuating circumstance in favor of the prisoners. It was a premeditated deed, fully carried into execution. Their unfortunate victim had done them no injury, they were solely actuated by the paltry lucre which they admit was offered to them, no one's life is safe with such mercenary assassins, and they appear to me deserving of capital punishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Sconce, C. B. Trevor and G. Loch.)

Mr. A. Sconce.—We can have no alternative in this case, but to convict the prisoners of taking part in the murder of Soogunda. All the prisoners, first before the Police Darogah and afterwards before the Deputy Magistrate, admitted under circumstances which, upon careful consideration of the proceedings, appear to be free from suspicion, that they were present and aided in the commission of the murder.

But in admitting the aid which they afforded, the prisoners uniformly charged a woman named Gooree, wife of one Munnoo Panjah, as being the principal offender. Gooree, they said, irritated by the illicit communications of the deceased Soogunda with her husband Munnoo, resolved to get rid of her. Such is the motive which the prisoners in their confessions, have ascribed to Gooree. Of the exact nature of the intimacy between Soogunda and Munnoo, we have indeed no explicit evidence. This intimacy may or may not have been harmless. But for the disposal of this trial being mainly confined to the confessions of the prisoners, we must look to the cause and to the perpetration of the crimes as described by them.

The four prisoners have been employed as boatmen by Munnoo Panjah, and this employment appears to have furnished Gooree with the influence which she is said to have exercised. In the month of Phalgoon, she is said to have spoken to the prisoner Noboo, to engage a sorcerer to assist her purpose; and finally on the 25th Cheyt, she asked all the prisoners to meet at her house that evening. The latter confessions recorded by the Deputy Magistrate, are less full in these particulars than the confessions delivered before the Darogah; and it is to be regretted that the whole statements, which the prisoners appeared to have been prepared to make, were not fully taken down by the former officer.

It appears that the prisoners Madhoo, and Joodisteer first joined Gooree on the evening of the 25th Cheyt, that Noboo and Sreemunt afterwards came, and that on Soogunda passing from the *hat* where she had gone to make purchases, they followed and murdered her. According to the confessions, the

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plan laid appears to have been intended to prevent the escape of Soogunda by flight. Two prisoners Noboo and Sreemunt are described as taking one line; Gooree and the two other prisoners another

Before the Magistrate the several prisoners described their share in the murder as follows.

Naboo said that Gooree ran ahead, seized and threw down Soogunda and squeezed her throat; that she called on them to hold, and he himself took Soogunda's hand, Mudhoo her head, Sreemunt another hand, Joodisteer her legs; that Gooree pressed her chest and choked her.

Mudhoo said that they all enclosed and seized Soogunda; that he, Naboo, held her legs; Sreemunt and Joodisteer her hands; and Gooree pressed on her chest and choked her.

Sreemunt and Joodisteer said as Noboo, that Gooree had ran on and seized Soogunda, and that she sat on Soogunda and choked her, while they held her hands and legs.

All prisoners agree in stating that Gooree carried off the deceased's ornaments and desired them to cast away the body; which they did, leaving it amongst some short jungle a little distance from the scene of the murder; and next day in the same place it was found much torn by jackals.

The statement of the prisoners with respect to the presence of Gooree is strongly corroborated by the evidence of the witness Bullabee, who says, with the appearance of credibility, that on the evening of the murder she had seen Gooree and the four prisoners follow up and stop Soogunda.

I would convict all the prisoners as accomplices in this murder. Only a faint distinction can be drawn as to their guilt, but it appears to me upon the disclosure of the confessions that Mudhoo and Joodisteer were more prominent in the confidence and in the support of Gooree; and guiding my judgment by the tenor of the confessions, I would sentence Mudhoo and Joodisteer to be hanged; Naboo and Sreemunt to be imprisoned in transportation for life.

Mr. G. Loch.—The prisoners confessed before the Darogah and the Deputy Magistrate that they were instigated by Musst. Gooree, wife of Munnoo Panjah with whom the deceased Soogunda was carrying on an intrigue, to murder the deceased; that as far back as the previous Falgoon, Gooree had promised Naboo Patur to release him from a debt due to her, if he would secure the services of a "*goonin*" or witch to destroy Soogunda, and each of the prisoners admits that Gooree offered him money sometime previous to the murder, if he would join in killing Soogunda. They further state that at the summons of Gooree they assembled at her house in the evening of the 25th Cheyt, and watched till they saw Soogunda pass the house on the return from the Belliaghatta *hat* towards her own house and cross a

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khall in the vicinity, when they, accompanied by Gooree, followed her, two of them Naboo and Sreemunt making a circuit to get ahead of her, while the others came up from behind; that she was seized and thrown down by Gooree who got on her chest and pressed her throat and mouth while the prisoners held her down, that when dead they stripped her of her clothes and ornaments, which Gooree took away, promising to pay them the sum agreed upon for the job, viz. Rs. 5 each man, and by her directions they threw the body of the deceased into a dry tank, where it was the next morning partly devoured by jackals. The face and upper part of the body were fortunately untouched and thus the corpse was easily recognized.

There is no direct evidence to the actual perpetration of the murder, nor has the evidence, such as has been obtained, been considered sufficient to convict Gooree, who was released by the Magistrate. In her evidence on the trial Musst. Bullabee witness No. 16, states that she saw Soogunda pass the house and cross the *khal*, followed by Gooree and the prisoners, who all seized her and then as it commenced to rain, she ran into her house and she adds that when Bhyrubee, sister of the deceased, came to her house that night to make enquiries for Soogunda she told her what she had seen. Kangali Soot examined by the Magistrate but not by the Sessions Judge, deposed that he saw the prisoners following the deceased. Mudhoo Manjee witness No. 18, deposes that he was roused in the early part of the night by Bhyrubee who came to enquire for her sister who was missing; that he ascertained from the females of the family that Soogunda had stopped in her way home from Belliaghatta at his house to deliver some *pán* and had gone homewards; that he accompanied Bhyrubee to Bullabee's house, which was by the road-side and adjoining Munnoo Panjah's; that, in his presence, Bullabee informed Bhyrubee that she had seen the prisoners that evening in Munnoo Panjah's house talking to Gooree; that Bhyrubee immediately suspected Gooree on account of the anger she bore towards her sister, of whose intrigue with her husband she was aware; that they went to Munnoo Panjah's house, but he said that Soogunda had not been there. The evidence of Golak Bhooa witness No. 19 is to the same effect.

The prisoners, on their trial, plead *not guilty*, and state that they were at home on the night of the murder, and that their confessions to the Darogah were extorted, and they call witnesses to prove their statement. The evidence of these witnesses, however, does not support the defence.

It is evident from the detailed confession made by the prisoners to the Darogah, and Deputy Magistrate, the credibility of which I see no reason for calling in question, that the prisoners were present aiding and abetting in the murder of Soogunda, that while each denies being the actual perpetrator of

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the murder with the commission of which they charge Gooree, they all helped to keep down the deceased, and prevent her resisting. They all admit either before the Darogah, or Magistrate, that they were previously aware of Gooree's intention to murder the deceased; that she had promised them 5 Rupees a-piece to join and assist in committing the crime, that they consented to do so, that at her summons they assembled at Gooree's house, and waited for their victim on her return from the *hat*, and then set upon and murder her. In the present case, where all prisoners appear to be equally guilty, all having knowingly and wilfully conspired to commit the murder, and all being actually present and helping to commit the murder, I do not see how we can apply the principle of selection. All are equally guilty, all must equally suffer. I would sentence all the prisoners capitally.

Mr. C. B. Trevor.—My colleagues Messrs. Sconce and Loch both concur in the conviction of all the four prisoners of being accomplices in the wilful murder of the deceased Soogunda; they concur also to sentencing Mudhoo and Joodisteer to be hanged; they differ, however, regarding the measure of punishment which should be awarded to Naboo and Sreemunt. Mr. Sconce would sentence them to imprisonment in transportation for life. Mr. Loch would sentence them capitally; it is upon this point of difference alone that the case has been referred to me.

As to the particular part which each person bore in the murder of the deceased there is nothing on the record except what can be gathered from the confession of the prisoners themselves; those confessions admit on the part of each of them an equally active part in the murder of the deceased; they were all present at the murder and they all assisted in holding the deceased down with a view to prevent her resisting Gooree, who according to the united confessions, actually killed her. Such being the state of the record, looking to the confessions of the prisoners, the only evidence against them, I could see no valid ground for making any difference in the measure of punishment to be awarded to them. It appears to me, however, that this case has not been investigated as it should have been, but if the confessions be true, and it is only on the ground of their truth that the prisoners can be found guilty of the crime laid to their charge, one or two of them should have been allowed to turn Queen's evidence, in order that their depositions might have been made use of with other corroboratory evidence in bringing the principal offender to justice, this has not been done; and though, undoubtedly the non-conviction of a party appearing from the record to be the principal offender does not render the accomplices in the crime less guilty than they would otherwise be,

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still I do not think under the circumstances that the extreme penalty of the law should be carried into effect against them.

I therefore concur with Mr. Sconce in sentencing the prisoners Naboo and Sreemunt, to imprisonment in transportation for life.

PRESENT:

J. H. PATTON AND A. SCONCE, ESQS., *Judges.*

GOVERNMENT AND SHIBAI BEHARAH

versus

MANN BEHARAH.

Cuttack. 1858. November 29. Case of MANN BEHARAH.

Prisoner convicted of murder; but in consideration of the provocation offered to him, is sentenced to imprisonment in transportation for life.

CRIME CHARGED.—Murder of Bidia Beharah son of the co-prosecutor on the 1st August, 1858.

Committing Officer.—Mr. C. W. Mackenzie, Deputy Magistrate of Central division, zillah Cuttack.

Tried before Mr. J. Ward, Sessions Judge of Cuttack, on the 9th September, 1858.

Remarks by the Sessions Judge.—On the 1st August the deceased and the prisoner in the day-time, quarrelled in a liquor-shop which was owned in common by the brother of the prisoner and by Bidia the deceased; at 7 in the evening the prisoner, whose house is near to that of Bidia, began to quarrel with the younger brother of Bidia; witness No. 1 states that Bidia told the prisoner Mann to be quiet and running towards him seized him by the hair on which Mann struck him with a sharp *kutooree* produced in Court, three very severe blows, two on the loins, one on the back, on which Bidia fell down bleeding, and died on the next day. The *kutooree* belongs to the father of the prisoner, but whether the weapon was in the hands of the prisoner or was near at hand is not known as it was dark. Witness No. 2, a boy of 12 was not examined on oath by the Deputy Magistrate, Mr. Mackenzie, but as he knew the nature of an oath he was sworn before this Court. He states that witness No. 1, gave the *kutooree* into the hands of the prisoner his son-in-law, without being asked to do so. This seems improbable, witness No. 2, saw the wounds inflicted by the prisoner and speaks of the quarrel.

Witness No. 7, recognized the voice of defendant quarrelling and saw him run past with the hatchet in his hand.

The Assistant Surgeon deposed that the wound on the back alone was sufficient to cause death. It was below the left shoulder-blade and divided the skin muscles and also the 7th rib, of which a portion was cut out and lying loose in the wound, a large portion of the left lung protruded through the opening,

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the other wounds were severe. The deceased mentioned the prisoner as the party who had wounded him.

The prisoner denies the charge and says that he was beaten by ten or twelve men and ran away and knows not who killed Bidia his cousin, but he has only one witness for his defence who is his relation.

The Law officer considers this charge proved and that the prisoner should be punished by *akoobut*. The night was dark, but it is credible that such near relations and neighbours may have recognized the parties. I do not believe witness No. 2, in regard to witness No. 1, having put the weapon into the prisoner's hands. It may have been in his hand or close at hand, and when his hair was seized by Bidia he struck the three blows with the sharp weapon consecutively, and is therefore in my opinion guilty of murder. Though there was a previous quarrel, it is not likely that the prisoner deliberately took the hatchet in his hand with previous intent to commit the murder, for the cause of the quarrel does not appear to have been of a serious nature. The provocation of having his hair pulled, it seems, caused the furious attack. I do not recommend that the extreme penalty of the Law should be carried out, but that the prisoner should be banished beyond the seas in transportation for life with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and A. Sconce.) It appears that the deceased, Bidia, and a brother of the prisoner, were joint-holders of a *taree* license; and that on the afternoon of Sunday, the 1st August, a dispute in which prisoner took part, arose respecting the terms upon which the joint lessees should hold the lease. After nightfall, prisoner and a younger brother of Bidia again began quarrelling on the same subject, when Bidia rushed up and seized the prisoner by the hair and the latter immediately struck Bidia three blows with a *kutooree*, a weapon not described by the Sessions Judge, but which appears to be used for tapping *taree* trees.

One of the three wounds inflicted by the prisoner was fatal: struck below the left shoulder-blade, it divided the skin muscles and 7th rib; a portion of this rib was cut out, and lay loose in the wound; while a large portion of the left lung protruded through this opening. The second wound reached from the spine to the abdomen, dividing the soft parts; the third was less severe; but this also cut through skin and muscles. Bidia died on the evening of the next day.

Considering the weapons used and the virulence of the attack, the prisoner is fully convicted of the crime charged and, as proposed by the Sessions Judge, we sentence Mann Beharah to imprisonment in transportation beyond sea for life.

REGULAR CASES.

DECEMBER,

1858.

REGULAR CASES.

DECEMBER 1858.

PRESENT:

J. H. PATTON, Esq., *Judge*, AND H. V. BAYLEY, Esq., *Officiating Judge*.

GOVERNMENT AND ANOTHER

versus

NILMONI DOSS (No. 12,) MOHUN DOSS (No. 13,) MOHUN DOSS (No. 14,) RAMGUTTI DOSS (No. 15,) AND JOOGUL DOSS (No. 16.)

Jessore.

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Case of NILMONI DOSS and others.

In a case of rape, where after her *forcible* abduction, *four* men successively violated the prosecutrix who was eight months with child, and looking to the crime of rape being a heinous one, the Court awarded a sentence of fourteen years' imprisonment in banishment.

CRIME CHARGED.—Nos. 12 to 15, with committing a rape upon the person of Mussamut Anando Dasya, wife of the prosecutor Nimchand Doss on the night of the 11th of June, 1858, or 30th of Joisto, 1265; 2nd count, committing an aggravated assault upon the person of Mussamut Anando with intent to rape her; 3rd count, No. 16, with aiding and abetting in the above charges; 4th count, No. 16, with privity to the above charges.

Committing Officer.—Mr. E. W. Molony, Magistrate of Jessore.

Tried before Mr. W. S. Seton-Karr, Officiating Sessions Judge of Jessore, on the 9th November, 1858.

Remarks by the Officiating Sessions Judge.—The prosecutor was absent in the Sunderbuns, when he was informed that his wife, during his absence, had been violated by the four first defendants. On this he returned home, informed his landlord, and by this person's advice made a complaint to the Deputy Magistrate.

The violation is said to have occurred on the Friday. The prosecutor was informed on the Tuesday morning and came home that night. On the next Friday he made his complaint, only two days having intervened. There was thus, no delay beyond what might be expected from the peculiar nature of the case.

His wife, Anando Dasya, entered in the calendar as witness No. 1, was made prosecutrix by this Court. She states that she was sleeping on the night in question in her own house in company with Brahmo Bewa witness No. 5; that the prisoners Nos. 12 to 15, came there, threw clods and brickbats, prevented any neighbour coming to her help, and battered at the sides of the house; that she admitted the prisoner Joogul No. 16,

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because he asked to be let in and told her not to be afraid; that the others cut at the fastenings of the sides of the house, but were admitted by the door which Joogul pushed or threw down; that Joogul kept close to Brahmo Bewa, and thrust her, the prosecutrix, away from him, and towards the other defendants, who carried her away to some distance and there throwing her down, deliberately violated her in succession, No. 13, first, No. 15, next, then No. 14, and then No. 12. She further states that she was eight months gone in pregnancy at the time, and she produces in Court the child that was born a month after the outrage. She remained senseless and speechless on the ground, until brought home by the witnesses Nos. 2, 3 and 4. This statement was delivered with calmness, and with that degree of modesty, which a respectable woman, on whose character there has never been any imputation of levity, might be expected to display. The defendants were recognised by their voices as well as by their countenances, which, as the night was starlight, might well be the case. To account for the outrage, she states that some time back advances were made to her by some of the defendants, which she rejected and of which she informed her husband, who said that they could do nothing.

The version of the prosecutrix is corroborated fully by the evidence of witnesses Nos. 2, 3, 4 and 5. No. 2, Ramjiban, was told by another person to get up on hearing a noise, when he did so and called Joogul, prisoner No. 16, who went into the house of the prosecutrix. The witness saw the other prisoners go towards the house, but he could not recognise them until afterwards when he went close and saw them holding the prosecutrix down. The prisoners then came at him, on which he ran away, fetched the chowkeedar, and again returned, and saw the men distinctly, and the woman naked and speechless on the ground. He helped to carry the woman home, and he says that on recovering her senses, she told Surjye Bewa the names of those who had violated her.

No. 3, is the chowkeedar, and his evidence is precisely to the same effect. He heard the noise, asked Surjye, No. 12, what it was, followed the defendants, saw three men standing and one Nilmoni still lying upon the woman, and the woman naked and senseless. The prisoners he recognised partly by the voice and partly by their countenances.

No. 4, speaks very much to the same effect.

No. 5, is the woman Brahmo, who was sleeping in the same house as the prosecutrix, and she corroborates that person's statement as to the entry, first of Joogul, who was admitted by the prosecutrix, and next of the prisoners, who got in by the door when it was thrust aside by Joogul. She saw the four prisoners carry off the prosecutrix, and she saw her brought

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back, after evident ill-usage, through the help of the chowkeedar and others.

This witness, it is to be remarked, admits that the prisoner Joogul had connection with her that night, a fact which Joogul denies in his confession, though it is not very easy to see for what other ultimate purpose he could have gone to the house at all. But this admission on the part of Brahmo, a widow, is obviously no imputation on the character of the prosecutrix, who has always been correct in her conduct, and who is represented as fond of her husband. Moreover, the difference between the demeanour of this witness, and the modest demeanour of the prosecutrix, as they delivered their testimony, was patent to the Court.

The witnesses Nos. 2 to 5, distinctly swear that when they severally brought home or saw the prosecutrix naked and speechless, there were evident marks on her clothes, which were found lying under her, *of the emission of the seed*, showing evidently that the offence had been *perpetrated*, and witnesses Nos. 12 and 13, women, depose that they examined the privy parts, which they found considerably swelled, and that there had been an effusion of blood as well as distinct marks of violence on the clothes; No. 13 also deposes that the defendants came near her house previous to the outrage, and that she knew them and gave them *pan* to go away.

The defence of the prisoners is enmity, and an *alibi*. The prisoner Joogul confessed both before the police and the Deputy Magistrate, that the other four prisoners had told him of their intention to violate the prosecutrix and that he had attempted to dissuade them, refusing to join ; that he went to the house afterwards and was let in by the prosecutrix, but that he was held down by two men whilst she was taken away. He denies either pushing away the prosecutrix, or having intimacy with Brahmo Bewa. But supposing him to be intimate with her, which, after her admission, cannot well be doubted, this would be a natural reason for the other prisoners to communicate their intentions to him, as they might the more easily get into the house by his means. He might then pair off with the widow: they might effect their cowardly purpose with the wife.

The defence of No. 12, is that of witnesses Nos. 14 to 19. Three men know nothing, two men saw the prisoner that evening but not that night, and one is aware of the fact that the plaintiff and the defendants have ceased to eat together for two years, because a relation of the plaintiff's married some woman, and the marriage displeased the defendants.

No. 13 has three witnesses, Nos. 20 to 22, (the others being either dead, rejected, or knowing nothing) who declare that the prisoner was away from home at the end of the month of Joisto

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when the occurrence is said to have taken place. But, besides that, two of them are nearly related to the prisoner, they had evidently learnt up one single date, for their remembrance of which they could not account, and they were unable to mention even the day of the month they were in Court, i. e. the present date, or any other date.

No. 14, relies on the evidence of witnesses Nos. 26 to 31. Two men know nothing, two declare that the parties do not eat together and two others, relations, declare that the prisoner went to the house of witness No. 26, on the 30th of Joisto, staid a day and returned. But they cannot account for their knowledge of this date, or for their ignorance of all other dates.

The witnesses of No. 15 know little or nothing. Witness No. 32, closely related to defendant, says that the defendant went to the Sunderbuns in Joisto and returned in Asar, but witness No. 35, cannot say when he went, though he knows that the defendant did go.

The witnesses of No. 16, know nothing at all.

The jury found the four first prisoners guilty on the first count and prisoner No. 16, guilty on the 3rd count, of aiding and abetting. I agree with them as to all but the last prisoner.

The prosecutor and prosecutrix are respectable people living together, in perfect trust and reliance, as husband and wife. The evidence in support of their statement is clear, precise and consistent. Information was given to the Deputy Magistrate as soon as could be expected, and the prayer of the prosecutor was, that the Deputy Magistrate would go to the spot and investigate the matter in person. This is not the request of a man getting up a false charge. The defendants are said to be lewd characters. Their innocence, if supposed, rests on the supposition that the charge was got up through enmity, and on *alibis*. The latter are frivolous or ill-supported. As to the enmity, the prosecutor admits that he has had no social intercourse with the defendants for two years. But that, on any ill-will arising from such cessation of intercourse, he should voluntarily expose his wife, eight months gone in pregnancy, to open cross-examination in two successive Courts of justice, bring half a dozen witnesses to testify to minute facts illustrating a repulsive and barbarous outrage on her, and thus publish his dishonour all over the country, when there are so many other much easier ways of bringing false accusations against personal enemies, does seem to me an utterly incredible explanation of the case. If there is any difference between the parties, the spite is with the defendants, their names were mentioned from the very first. The mass of evidence is clear and decisive. The defence is incredible or absurd. I convict the four first defendants of having *perpetrated* a rape on the person of an honest and unoffending woman; and the outrage being one of

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an aggravated character, and one where it is impossible to make any distinction between the parties, I recommend that they be all four sentenced to fourteen years' imprisonment in banishment with hard labor in irons.

I acquit the defendant Joogul for the following reasons. His confession, though I believe it to be genuine and though it corroborates the case as against the other defendants, only amounts to the bare concealment of a criminal act to be committed, and such concealment of felony does not make the concealing party guilty. (Archibold, page 8.) Besides, taking his confession as genuine, it shows that he endeavoured to dissuade the prisoners from the commission of the act. This disposes of the 4th count, and as to the aiding and abetting, I consider the evidence of the woman Brahmo, who shows that he came to visit her. The mere act of thrusting a door aside, or giving a woman a push, if she clung to him for protection, even though it be in the direction of the defendants, will not make him a participator in the offence, either as principal in the second degree, or as accessary before the fact. No offence was committed *then* but assault, and the minute that the others departed, No. 16 departed also, and the witnesses Nos. 2 and 3 never saw him near the prisoners afterwards. As for what he may have done to the woman Brahmo, he is not charged with it. Taking the whole circumstances together, I do not find any presence on his part at the rape either actual or constructive, to justify a conviction. I give him the benefit of his sudden disappearance. Had he watched near the spot afterwards, a conviction might have followed. I release him from the charge.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and H. V. Bayley.) This case is a referred one, but the prisoners have also appealed. They urge in their appeal:

1st. That prisoners Nos. 12 and 13, are brothers, and prisoner No. 14, is maternal uncle to prisoner No. 15, and that therefore it was most improbable they would simultaneously commit a rape. We would here observe that if the evidence for the prosecution be true, there is no improbability in the fact that the four individuals who successively committed so gross an outrage on an honest woman, eight months gone with child, would not be restrained by their mutual relationship. The appeal then proceeds to state that there was no witness to the fact; that there were clouds and rain at that season, quite preventing recognition and that the only evidence of recognition is said to be by voice. These points will be covered by the following remarks.

The offence was perpetrated on the 11th of June. The husband who was away from home received information on the

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15th. He complained to the Deputy Magistrate* on the 17th and the Deputy Magistrate on the 19th (the order on the petition neither indicates place nor officer) ordered the police to enquire. When that order was issued or reached the police does not, as it should have done, appear. But the police only report on the 4th and 8th of July. The statement of Anund Dossea the woman who was raped, is clear and consistent. It fully fixes the guilt of the offence on prisoners Nos. 12, 13, 14 and 15. That statement is well corroborated by the evidence of witness No. 5, who was with Anund Dossea in the house; also by that of Ramjeebhun witness No. 2, and Gour chowkeedar witness No. 3, who came up and saw the prisoners; the witness No. 3, moreover saw the prisoner No. 12, in the act; witnesses Nos. 12 and 13, saw the effects of the act on the person and clothes of Anund Dossea.

None of the prisoners substantiate their *alibis*, or any of the pleas urged in their defences. Witnesses Nos. 26 and 27, are indeed the only witnesses who approach to it in favor of prisoner No. 14, but their evidence as to his *alibi* is so unsatisfactory especially as to their knowledge of other dates, that it is far from leaving us with any other reasonable conclusion than that the prisoner No. 14, could not have been engaged in the offence charged. In para. 14 of the letter of the Sessions Judge "witness No. 32," seems an error for "No. 34."

We think this case of rape a very aggravated one. *Four* men successively commit it; the woman is *eight months gone with child*, is of good character, and is violently attacked at night in her house, in her husband's absence, the house broken into, and she violently carried off, and shamefully violated. Looking to the circumstance of this rape, to Clause 3, Section 16, Regulation XVII. of 1817 and Nizamut Adawlut Reports 1850, page 267, treating it as a heinous crime, we affirm the sentence of fourteen years' imprisonment in banishment recommended by the Sessions Judge.

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* Para. 17 of Sessions Judge's letter.

PRESENT:

C. B. TREVOR AND H. V. BAYLEY, ESQS.,
Officiating Judges.

GOVERNMENT
versus
HENRY BRAMIER ALIAS BOUSICK.

24-Pergunnahs.

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Case of BRAMIER *alias* BOUSICK.

Held that in this country as in England, constables and police officers are specially protected by law when acting in the execution of their duty. That by the ruling of this Court the homicide of a police officer is presumed to be malicious and an act of murder and proof of matter of excuse in extenuation lies on the party charged; which proof may appear either from evidence adduced by the prosecutor or from evidence offered by the prisoner; whereas in other cases the question whether a crime

CRIME CHARGED.—Wilful murder of inspector Patrick Brown, a constable of police, when in the legal execution of his duty.

Committing Officer.—Mr. H. D. H. Fergusson, Magistrate of the 24-Pergunnahs.

Tried before Mr. E. Lautour, Sessions Judge of the 24-Pergunnahs, on the 10th November 1858.

Remarks by the Sessions Judge.—The prisoner being a European, a native of Prussia, the gentlemen named in the margin* sat with me as assessors, Mr. Young being the Prussian Consul.

* Mr. fi August Young.
,, J. H. Reily.
,, J. S. Bell.
Baboo Tarucknath Sen.

The facts are shortly these. A body of seamen left the ship *Trimountain* on the evening of the murder and proceeded direct to a grog-shop on the roadside and near Carpenter's Hotel in the Garden Reach.

After drinking hard, wine and spirits, on the closing of the shop, they proceeded down the reach and towards their ship. They appear to have been in search of women of the town and entered first the house of Kalachand Gwala, witness No. 10, who was assaulted by them; next they similarly entered the house of Neemchand, witness No. 11, who ran off to Gobind Baboo witness No. 1, who gave information to the police of the disturbance, and upon which the deceased police Sergeant, armed with his sword and a stick and accompanied by the burkundazes Gowher witness No. 3, and Kudrutoollah, witness No. 4, and the witness No. 1, Gobind Baboo, proceeded to the spot. The Sergeant, on coming up with the sailors, was collecting them together with his stick, which the witness No. 1, Gobind described as poking them, meaning setting them in line, when the prisoner came up and abused him and ran off, upon which the Sergeant, having the sailors already in custody, pursued the prisoner, who ran into one of the *Punch Kotee* houses. The witness No. 1, Gobind and witness No. 3, Gour burkundaz followed the Sergeant and looked amongst the trees for the prisoner, who then came out again and ran off, followed by the Sergeant, at whom the prisoner struck with a stick

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is murder or manslaughter is to be decided upon the evidence produced and not upon any presumption arising from the mere act of killing.

Held that under *general* law current in this country, a constable or other police officer may arrest for an affray, riot or other breach of the peace without a warrant if the arrest be made during its continuance or immediately afterwards, and that under the suburban police law Act XXI. of 1857, Section 51, any police officer may arrest without a warrant any person committing *in his view* any offence against that Act, but that mere abuse given to a policeman in the execution of his duty if unaccompanied by words

(a belaying pin, of wood) which blow the Sergeant warded off, and the prisoner's stick was broken into two. The prisoner then threw the part that remained in his hand at the Sergeant and again ran off, followed by the Sergeant, upon which he faced about and the Sergeant struck him with his stick (a bamboo about four feet long and of the usual thickness) on the forehead, upon which the prisoner closed with the Sergeant and a struggle followed, in which both were rolling in the roadside ditch. The prisoner shortly afterwards got away and ran off. The Sergeant also went a few paces after him but immediately came back. He appeared covered with mud, but, on examining him, this was blood and he soon sank down and never spoke. The witness No. 1, Gobind Baboo went to call witness No. 8, Mr. Watkins, who lives in one of the *Punch Kotee* houses, who came out as did Mr. Ilbery, witness No. 9. The Sergeant was then alive. The latter gentleman and the witness went for Superintendent witness No. 2. Smith at the Watgunge station, who came with the jemadar Abdool Ruhman, &c., and, on reaching the spot, found another European sitting there with the Sergeant's head on his lap; this was one of the party of seamen and pointed out by the witness No. 1, Gobind as such. He named the vessel the seamen belonged to, and the witness No. 1, Gobind told the Superintendent he could identify the party, from the wound the Sergeant had given him on the forehead. The Superintendent and the police and this witness went on board the *Trimountain*, called up the officers, and proceeded with them to the forecastle, where the prisoner was found, who ran off and got into a berth, pretending to be asleep, concealing his forehead with his left arm. The other Europeans turned out; he remained pretending illness; the Superintendent removed his arm, when the wound on the forehead became apparent, and the prisoner was taken in charge. The witness No. 1, Gobind then speaks to the wounds on the Sergeant, one in the breast, and two other stabs on the left side, and one cut on the back of the hand; further that witneseses Nos. 8 and 9 Messrs. Watkins and Ilbery sent for the doctor belonging to the Peninsular and Oriental Company. On opening the Sergeant's clothes, the wounds were seen. The *lattee* of the Sergeant was picked up, as also the sheath of a knife marked D. The knife (C) was found on board; the prisoner, when asked for it, sent another seamen to fetch it.

The other knife was found on the following morning in the grass. The sheath belonging to it was found on the road, about one hundred and twenty cubits from the spot. The cap was found on the spot, supposed by witness to belong to the prisoner. A shoe belonging to the left foot was also picked up with a piece cut out as though to prevent rubbing against a sore. The Sergeant's sword in Court was in its scabbard. When the

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prisoner ran into the premises at the *Punch kottee*, he was much intoxicated. He might have been drinking a little, but on board was quite sober; is not able to say whether the blow delivered by the prisoner actually struck the Sergeant; the prisoner first struck at the Sergeant. The night was too dark to see whether the blow took effect. The witness No. 1, Gobind did not interfere further than by calling out for Police.

The above narrative of the case is the pith and substance of the evidence of Gobind, witness No. 1. The next witness is No. 3, Gowher burkundaz, who corroborates the evidence so far as to going to the scene of disturbance with the Sergeant; the pursuit by him of some European; his entrance into the *Punch kottee*: the struggle between the Sergeant and the European; the Sergeant's attempt to follow the prisoner; his inability; his being covered with blood; and his sinking down and never speaking. This witness went to fetch Dr. Waller, who was ill and did not come; two other gentlemen came; on returning to the spot the Sergeant was dead; and he went with the body to Alipore. The night was very dark and the prisoner ran away to avoid being taken by the police.

Witness No. 2.

The Superintendent Smith witness No. 2, confirms the narrative of the witness No. 1, Gobind and, arriving nearly opposite the gate of No. 19, where Mr. Ilbery witness No. 9, lives, found the Inspector quite dead and some European gentlemen standing by him and some native policemen and a half intoxicated seaman (James Leim, witness No. 18.) He proceeded on board the *Trimountain* and states the results already recorded. The knife (C) acknowledged by the prisoner was found by Inspector Journey on the port side of the rail. The prisoner accounted for his wound on the forehead by saying a stone had fallen on it when at work. After taking the prisoner on shore, the Police jemadar's foot struck against something which the Superintendent picked up about 50 yards from the spot. This was a shoe which John Smith, witness No. 12 seaman, identified next morning. The witness said that James Lee, witness No. 19, the second mate, knew that he had been wounded by the stone when removing ballast, who, however, denied all knowledge of the fact. This witness gives the deceased Sergeant a high character for good conduct and carefulness, never having had any complaints made of harshness against him.

Witness No. 5.

Dr. Baillie, Civil Surgeon, deposes to the wounds. The second and third wounds were stabs and mortal. The first stab was checked in its progress by the cartilage over the fourth rib. The other wounds were cuts five in number. He fitted the knife C into the stab wounds. It fitted exactly.

or gesture or demeanor indicating on the part of the party using them, an intent to attempt a rescue, or by threats, or words, or gestures, encouraging a prisoner to escape, does not justify an arrest without a warrant.

Held that when the right to arrest does not exist or in the form in which it is attempted to be exercised, the officer attempting the arrest has no protection either from his office or even from the fact of the party being an offender; the officer becomes a mere private individual, and the person on whom the arrest is endeavored to be made may lawfully resist and in resisting may lawfully employ all the means requisite for him.

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Held, that in order to bring a crime within the category of excusable homicide in self-defence, the party pleading it must show that the exercise of the right of defence was necessary; for the right being founded itself on necessity, cannot extend beyond this foundation or, in other words, cannot legally be exercised in any case or to any degree which is not necessary.

Held also that in order to justify the finding of manslaughter, there must be a sufficient provocation and the fatal stroke, or strokes must be clearly traceable to the influence of passion arising from it.

Held moreover, that in the consideration of cases in which the intent of the

The other knife E when similarly tested was too broad. Examined the prisoner. There was an abrased wound on the forehead, quite fresh. There was also a bruise on the outer side of the right arm as would be natural to a person raising it to defend himself, which appeared also fresh. His left elbow was swollen and severely bruised. There was a sore on the left foot. After receiving the stabs, the Sergeant could not have inflicted those blows as those stabs must have been very speedily fatal.

Witness No. 8.

The deposition of Mr. Watkins refers to hearing the disturbance when walking on the terrace of the house. This witness came out and found the Sergeant Brown, dying and unable to speak and a European (James Leim witness No. 18,) very drunk, holding his head on his lap. This witness sent for Mr. Ilbery, witness No. 8, who went for the Superintendent. Mr. Ilbery witness No. 8, details the same particulars. Both gentlemen endeavoured to draw the inspector's sword, the one holding the sheath, the other the sword. This they accomplished with so much difficulty as at once to exclaim it had not been drawn that night.

Witness No. 18.

James Leim, witness No. 18, states that the prisoner and other seamen were drinking in a grog shop near Carpenter's Hotel, to which he had gone to get pipes and tobacco and was invited by them, to join them. A large quantity of wine and spirits were taken. In about an hour or an hour and a half they all left, the seamen to go aboard ship. Some were on ahead. The prisoner, as they were passing the P. and O. Co.'s premises, invited this witness to come and pay him a visit on board. Kate was very drunk and quarrelsome and struck one or two of his messmates and this witness. He and William White witness No. 16, and John Smith witness No. 12, stood on one side of the road. Has no further recollection of seeing any of them again that night. A native told him, there had been a row and he went and found the body of a European; tried to give him some water; he was covered with blood; witness was the worse for liquor; the prisoner was the most sober man of the party; he drank only wine; from his conversation was able to see he was sober.

Witness No. 12.

John Smith witness No. 12, states that the prisoner Fred. Thompson, witness No. 13, Charley Blank, witness No. 15, Johnson, W. White witness No. 16, and Dick, went ashore from the ship *Trimountain*, and were drinking in the grog-shop, where they were joined by the witness No. 18. J. Leim, and details those particulars; was drunk, and W. White took him on board. Points out the belaying pin which the prisoner

showed him in the boat; also points out the shoe from which the prisoner cut out the piece in the forenoon as his foot was sore. The cap resembles that of the prisoner. Points out the knife C as belonging to Fred. the prisoner, and says that the other knife looks like White's; says the prisoner is a good quiet man, and that he was sober that night.

John Thompson or big Jack, to the same effect as to their all going to the grog shop and that some were drunk; that he only took wine and was perfectly sober; they all went down the road together; Dick, who was very drunk, struck the prisoner. He and Fred. wanted a light for a cigar; obtained one from an old man and shook hands with him and thanked him. A little further on, the prisoner said. "This looks like a brothel" and said, "Bebee," to which the man in the house said, "No Bebee," the natives began talking in their own language and the *jhamp* fell, upon which Fred. ran down the road. He ran into some gate; he was knocked down by the policemen and the natives, some one had a large stick, such as this in Court. John Smith witness No. 12, came up and deponent said, "Don't go there. There is a bloody row," but John Smith, witness No. 12, and Johnson went there; did not see the prisoner again that night; did not go on board. Fred. had something hard under his shirt. The cap is his. He had the shoe on when he came ashore; he cut a piece out on account of a sore; cannot identify the knives; Fred. was sober. When he was struck he called out "Charley" which might mean little Charley or himself; saw a European running after Fred. and heard blows struck. Gives the prisoner a good character as a quiet man. There were four or five policemen when Fred. was knocked down. He, Fred. ran off to get clear of the police.

Witness No. 13.

James Almeda,* to the same circumstance as to going to the grog-shop; took Dick on board; he and little Charley picked him up. After pushing off, Fred. the prisoner hailed them. Took him on board; he had no cap on. The cap and shoe are his. The knife (E.) is White's; (C) is Fred's. Fred told them he was half dead; that four or five had surrounded him with swords and he could not get away from them; that his belaying pin broke, and then he defended himself with his knife, which he struck into some one; he had the knife with him; it was wet, but cannot say whether it was bloody. Fred said he expected the person must be dead; told witness No. 17, Phillips about it on board.

* Witness No. 14.

Charley Blank† to the same particulars deposed to above. On getting into the boat, prisoner said he had been fighting with the policemen, he had his knife in his hand; he said the policemen

† Witness No. 15.

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person is in question his drunkenness though no excuse for crime is an element of very great importance and as bearing on the intention.

In the present case, the Court was of opinion that the officer was not acting within the line of his duty when he apprehended the prisoner; that consequently he was not specially protected by law; that the arrest was an illegal and aggressive act; that the fatal strokes inflicted by the prisoner were made under the influence of a sufficient provocation and the passion arising therefrom; that consequently the prisoner is guilty of culpable homicide or manslaughter and not of murder. Sentenced to 7 years' imprisonment with labor in irons.

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had struck him and he was half dead; that the wound on his forehead was caused by the policeman striking him with a sword. There was no wound when he went ashore or when drinking in the grog-shop. Points out the knife C as that of the prisoner. Has served with him on board a Prussian man-of-war and has known him three or four years; he is a good tempered man.

William White* speaks to leaving the ship with the others; to the drinking; to leaving the grogshop; to some of the parties shaking a native house; looking for women; to the policemen coming, witness No. 18, James Leim was with him; after parting company, next saw him leaning over the Sargeant's body. The knife C is the prisoner's. The other marked E belonged to the witness, which he threw away lest suspicion might attach to himself. The prisoner had no wound on the forehead when he came ashore, nor in the grog-shop. Fred said, Johnson had been hurt and his blood had fallen on him. His reason for coming to where the policeman was lying dead was, because it was on the road to the ship, gives the prisoner a good character.

* Witness No. 16.

Andrew Phillips,† to the conversation with Fred after coming on board. He said on coming down the road he had got into a row with the police; that he tried to get clear off, but was taken and ran into a garden to hide himself but they followed with lanterns, and that he again ran for it; that he was in danger of his life and took what he had and struck back; that the belaying pin broke and left the stump in his hand, but that having nothing left, he took what he had and slipped it into them once or twice, and was afraid he had killed one of them. At this time his forehead was bleeding; was not aware that he had any wound when he went ashore; the only blood he noticed on the prisoner was on his cloth, gives the prisoner a good character.

† Witness No. 17.

James Lee‡ contradicts the prisoner as to the wound on his forehead being caused by the fall of ballast.

‡ Witness No. 19.

The witnesses Gobind Pershaud and Lewis§ prove the mofussil confession.

§ Witnesses Nos. 6 and 7.

Mr. Fergusson.|| That the deceased was a sworn constable.

|| Witness No. 22, called for from this court.

Kalachand Ghose, witness No. 10.—To the sailors entering his house and striking him and

Neemchand Ghose, witness No. 11.—To the same purport, and to his calling up Gobind Baboo.

The prisoner pleaded *not guilty*. Being again called upon to

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say anything he might wish to say in his defence, states that he and the others went ashore from the ship *Trimountain* to the grog-shop, and, after leaving that, about half way from that place to the ship, Dick Kate, who was very drunk, gave James Leim a shove, upon which the prisoner remonstrated with him. He began cursing and swearing and said he would fight any one and pushed the prisoner two or three times, and so, as he continued to use bad language, left little Charley and August to look after him and went on ahead with Jack and White. Jack said, "Let us go and get a light," which he got from an old man and they thanked him. About twenty yards on Jack said, "Here are some ladies," to which the prisoner said "No; there could be none." Then Jack and he looked into the house, and the man said, "No bebee here, John." The *jhamp* fell and the natives began talking together. This house was ten or twelve yards from the road. Jack, William White, the prisoner, Johnson, and John Smith, were standing there. On seeing some four or five native policemen come up, and understanding that the natives wished to take them and never having been up at the police or imprisoned, the prisoner jumped across the road and stood amongst some shrubs in the gateway of a garden which he did not wish to injure and stepped back again. There were four or five policemen, one a native with a belt and badge. Some one struck the prisoner with a sword and another a blow with a stick. The second blow broke the belaying pin. Tried to run away; three or four followed; at this time lost his shoe. His cap was lost when he was struck on the forehead. After running about one hundred yards, the policemen came up again and knocked the prisoner down. The first blow was in the back of the neck; the next on the back; another on the arm. This was going on for two or three minutes; heard other footsteps and called out for help; warned the man who had him down that he was killing him and he would use his knife; got away and ran down the road and got into the boat; knows that he used the knife as it was out of the sheath.

Witnesses Dudly and Finbish,* Captain and chief Mate of the ship, give the prisoner the very best character.

* Witnesses Nos. 20 and 21.

Chundernath, the best native vakeel, addresses the Court at length for the defence, pointing out that the crime charged was within the category of excusable homicides; that the prisoner only used the knife in self-defence; that there was no premeditation; that sailors only went ashore in pursuit of their own amusement; and that, under the circumstances of the case, criminality could not attach to the defendant, for whom he appeared (by direction of this Court).

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The assessors are divided as to the nature of the crime charged.

Messrs. Young, Reily, and Bell find the prisoner guilty of Manslaughter, and Baboo Tarucknath Sen of wilful murder in killing a police officer.

The circumstances of the case appear to be these. A party of seamen came ashore from the *Trimountain* on the evening of the murder. The prisoner Fred. seems to have prepared himself for a collision with some one, inasmuch as he secreted a belaying pin about his person under his shirt Of itself this was not a formidable weapon; in no sense a lethal one. After closing the grogshop at 9 o'clock, the seamen and James Liem, who had worked his passage round in the ship from Bombay, proceeded up the road looking for women of the town. They appear to have entered at least two houses, with more or less violence, Kalachand Gwala and Neemchand's. This led to the latter going to his zemindar Gobind Baboo, who called in the police. It appears from his evidence that the Sergeant was collecting the sailors together with his stick, dressing the line as it were (the witness described this as poking,) when the prisoner came up from behind and abused him and ran away. The Sergeant followed, and this witness states that the prisoner then struck at the Sergeant a blow, which being warded off, the belaying pin, called by the witness a stick, broke and the prisoner, first throwing the part that remained in his hand at the Sergeant, ran off still followed by the Sergeant, when the prisoner faced him and the Sergeant struck him on the forehead, when the prisoner closed with the Sergeant, and both were struggling in the ditch together, when, after a short time, the prisoner got up and ran off, and the Sergeant, after going a few cubits, came back and soon sank to the ground and died.

It is in evidence (witness No. 8, Watkins and witness No. 9, Ilbery and Gobind) that the sword had not been drawn from the scabbard. The two gentlemen took the sword and attempted to draw it, one holding the scabbard, the other holding the sword. It was drawn with difficulty; it was perfectly clean, and both exclaimed that this sword has not been drawn tonight.

It is in evidence that the prisoner ran away from the police before coming into actual personal collision with the Sergeant. Two distinct acts of assault upon the police are proved, first, striking at the Sergeant with the belaying pin, which broke; secondly, throwing the remaining half at the Sergeant. The prisoner then ran and was followed by the Sergeant. The prisoner faced him, and the Sergeant struck him on the forehead; the struggle followed, with the results already recorded. Disarmed, but determined not to be taken, the prisoner, when he faced the Sergeant, must, I think, have done so knife in

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hand. We have no evidence of that however. It was very dark, but the only natural presumption is that the Sergeant, face to face, seeing the prisoner about to attack him, struck him on the forehead; then the prisoner closed and inflicted the stabs Nos. 1, 2 and 3, the two latter being mortal wounds. Had the Sergeant struck him on the back of the head when he was running away, this presumption would not arise. The Sergeant bears the highest character for consideration and conduct. There is nothing to show that the prisoner was struck by the Sergeant with a sword in its scabbard or out of it. The Sergeant never drew his sword. Further, a serious blow from the stick the Sergeant carried would probably have been very severe, possibly fatal. We have to take such evidence as is available, that of Gobind, and, according to that, the Sergeant was resisted and assaulted. The prisoner and the others had been engaged in acts of brawling, when the police Sergeant was called in. It was his duty to take in charge all drunken and disorderly persons concerned in a breach of the peace. The inspector was a sworn constable. Having arrested some of the party, he was abused by the prisoner, one of the parties concerned in the disturbance. He was resisted in his endeavour to arrest him and twice assaulted. The policeman was within the path of duty in endeavouring to arrest the prisoner. As to unnecessary violence, whatever force was used, that was caused by the resistance offered by the prisoner. He had never been taken to the police or jail and he was using his utmost endeavours, from that motive probably, to avoid caption. I am not of opinion that to effect this object, the Sergeant used unnecessary violence.

Neither do I credit the story of any assault having been committed by any native policemen. I believe they kept quite aloof and at a most discreet distance, and the blows on the back and neck were not mentioned to Dr. Baillie, who examined the prisoner. Apart from the prisoner's admission the case is very fully supported by the circumstantial facts brought to light. The finding of the sheath and knife and shoe of the prisoner and the wound upon his forehead.

I am of opinion that, by policy of law, which hedges in police officers, with additional protection, the offence charged in the indictment is proved. The prisoner was sober and knew that the deceased was a policeman. Dissenting in this respect from the majority of the assessors, I find that the prisoner is guilty of wilful murder, the deceased being a policeman acting within the path of his ordinary duty, and consequently, I consider the prisoner liable to suffer the extreme penalty of the law.

I have to place upon record that the prisoner bears a most unexceptionable character. I am of opinion that this high character should have some weight in connection with the little evidence we have to guide us as to the exact circumstances of

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the case; and, in sending up this case, feeling the necessity of a severe example in order to check the practice of drawing knives, I have to propose that the prisoner be transported beyond seas for the natural term of his life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor and H. V. Bayley.) From the evidence thus detailed above, the confession of the prisoner before the Magistrate, and the defence of the prisoner before the Sessions Judge, considered together, we are of opinion that, on the 2nd November, a party of six or seven sailors, amongst whom was the prisoner at the bar, belonging to the ship "*Trimountain*," came ashore from the ship; and, having drunk hard, went to, at about 9½ P. M., the shops of Kalachand and Neemchand Ghose in search of women of the town, slightly assaulting the former and injuring the curds and milk of the latter; that the latter person went and gave information of what had happened to Gobind Chunder Roy, witness No. 1, his landlord, who then went to give information to Sergeant Brown, deceased, at his section house hard by; that the Sergeant getting up from bed accompanied the informant, taking also two burkundazes with him, to the spot where the sailors were represented to be; that the deceased Sergeant and Gobind Chunder Roy, the informant, came up with these parties as they were going down the road, and that they in answer to questions from the Sergeant said they were going to their ship; that they were drunk at the time; and the Serjeant, with a view of detaining them, poked them with the *lattie* in his hand into line; that the prisoner at the bar either coming up at that time and abusing the Sergeant (though as to the nature of the abuse no question was asked of the witness Gobind Chunder, although from the evidence of Mr. Watkins it appears that the abusive language was not uttered by the foreigner whose accent was very peculiar and who exclaimed, "What do you want, policeman?" &c. who, we think, therefore, can have been no other person than the prisoner) or attempting to run away he was followed by the Sergeant with a view to arrest him; that after running into the garden of the *Punch kottee* with a view of escaping observation, the prisoner, unable to remain there, again ran out into the main road, and turning round struck at the Serjeant, whom he knew well to be a policeman, with a light wooden belaying pin, termed by the witnesses a *lattie*, that he had brought with him from the ship; that the pin broke against the Sergeant's *lattie*, who struck at the prisoner also; that prisoner threw the broken piece of the belaying pin at the Sergeant and again ran away for a short distance, when he turned round and stood as if to offer resistance; that the Serjeant, then, with the *lattie* in his hand, and not with the sword, struck the prisoner a blow on the head, which blow the witness,

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Gobind Chunder states, created "such a sound that he thought made a very severe wound;" that the prisoner at the bar then closed with the Sergeant; that they struggled together, rolled over, and fell together; and that in the course of the struggle blows were inflicted by the Sergeant on the prisoner's right arm and left elbow, and the prisoner at the bar, with the knife C. produced in Court, inflicted three stabs and five cuts on different parts of the Sergeant's body; that the cuts were not dangerous and one of the stabs made only a slight wound; but that the other two stabs, one on the left side between the fourth and fifth ribs, and the other beneath the fifth rib, were mortal and caused the death of Sergeant Brown, a very short time afterwards.

Such being the facts which as Judges of the fact of the case we consider proved, the following questions of law, arising out of those facts, remain for determination.

1st. Was the deceased inspector Brown, when struck mortally, acting in the legal execution of his duty? and,

2nd. Under the circumstances of this case, does the crime of the prisoner amount to wilful murder?

In this country as in England, ministers of justice as constables and policemen of all sorts, while in the execution of their duty, are under the peculiar protection of the law; and the killing of officers so employed is deemed murder of malice prepense, as being an outrage wilfully committed in defiance of the justice of the Kingdom.* In these cases too this Court, as may be seen from the case of Gnatook, decided on the 17th December, 1857, has adopted the important rule of English law; that homicide is presumed to be malicious until the contrary be shown; or, in other words, when the killing is proved to have been committed by the party charged, the presumption of law is that it is malicious, and an act of murder; and proof of matter of excuse or extenuation lies on the party charged; which proof may appear either from evidence adduced by the prosecution or from evidence offered by the defendant; whereas, in other cases this Court has frequently ruled that the question whether a crime be murder or manslaughter is to be decided upon the evidence produced, and not upon any presumption from the mere act of killing.

* Russell on Crimes, vol. 1, page 532, Ed. 1843.

In order, therefore, to determine the particular mode in which the evidence in this case should be looked at, as well as with a view of answering an important point of law arising out of the indictment, it becomes necessary to inquire whether the police constable, at the time he was killed, was in the legal execution of his duty.

The prosecution contends that several of the sailors were drunk, and as they had been guilty of riotous behaviour in a

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thoroughfare *and in the view of the police officer*, he was authorized by law, Sections 20 and 51, of Act XXI. of 1857, to arrest them without a warrant, and, on resistance being made, to use the degree of force necessary to effect the arrest.

The Judge writes, "That it was the duty of the deceased constable to take in charge all drunken and disorderly persons concerned in a breach of the peace."

Now there can be no doubt that, under the *general* law current in this country, a constable or other police officer may arrest for an affray, riot, or other breach of the peace without a warrant, if the arrest be made during its continuance or immediately afterwards, and that, under the Suburban police law, Act XXI. of 1857, Section 51, any police officer may arrest without a warrant any person committing *in his view*, any offence against the Act; and amongst the offences against the Act specified in Section 20 are the being found drunk and incapable of taking care of one's self, and the being guilty of any riotous or indecent behaviour in any street or thoroughfare, or in any place of public amusement. The question, then, which the Court has to answer is, whether, at the time of his attempted arrest by the deceased, the prisoner at the bar had, judging from the evidence before the Court, been guilty of an act rendering him liable to arrest without a warrant.

The evidence on the point is very meagre and consists mainly or rather, we may say, entirely on that of Gobindchunder Roy. On reverting to that evidence it will be found that it gives no ground for the conclusion that the prisoner and his comrades were in such a state of drunkenness as to be incapable of taking care of themselves. Neither does it show that the prisoner and his comrades were guilty of riotous or indecent behaviour in the view or in the presence of the deceased constable; so far from that, his evidence before the Magistrate of the 24-Pergunnahs which is more distinct on the point than that given before the Sessions Judge, shows that at the time the police and the prisoner and his comrades met, the latter were proceeding quietly down the road to go on board their ship, the *Trimountain*. It is true that the prisoner had with his comrades previously gone to the house of Kalachand Ghose and Neemchand Ghose in search for women of the town and had slightly assaulted the former and spoilt the curds and milk of the latter; but there was no breach of the peace committed by the prisoner and his comrades such as would justify their arrest without a warrant, either during its continuance or immediately afterwards.

It has been argued, however, by Baboo Sumbhoonath Pundit for the prosecution, that the abuse which the prisoner gave to the officer was sufficient to warrant his apprehension, if no other act committed by him was so. Regarding the abuse which was given to the Sergeant by the prisoner, the evidence is very

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unsatisfactory, on the supposition that it was so given, we are clearly of opinion that abusive language used to a policeman in the execution of his duty, if accompanied by words indicating an intent on the part of the party using them to attempt a rescue, or if accompanied by gesture or deameanour indicating such an intention, or if accompanied by threats, or by words or gestures encouraging the prisoner to escape, would justify the officer in arresting the party so acting. Mere abuse, however, especially when, as in the present instance, it is utterly undefined, is altogether insufficient to warrant an arrest under any circumstances, and the more especially when, as in the present instance, the officer was not at the time acting within the line of his duty.

As, then, for the reasons above given, we are of opinion that, whether the deceased Inspector desired to arrest the prisoner as being one of the sailors, who had entered Neemchand's house for, of the assault upon Kalachand, he seems not to have been then informed, or, whether on account of the abuse given to him subsequently, the arrest was not a legal one, inasmuch as the prisoner had done no act warranting it; it remains for us to enquire whether, under the circumstances of the case, the crime of the prisoner amounts to wilful murder.

It is a settled doctrine that when the right to arrest does not exist, or not in the form in which it is attempted to be exercised, the officer attempting the arrest has no protection either from his office or even from the fact of the party being an offender. The officer becomes a mere private individual, and the person on whom the arrest is endeavoured to be made may lawfully resist, and, in resisting, may lawfully employ all the means requisite for him. Such being the position of the parties, it becomes necessary for us to enquire whether, upon all the evidence produced in the case, the crime of the prisoner is murder or manslaughter.

The illegal attempt to arrest was an aggressive act on the part of the Sergeant. It was followed up by an act of assault on the part of the prisoner and counter-assault on the side of the Sergeant and was terminated by the fall and subsequent struggle together, in which the knife was used which deprived the Sergeant of life. All these acts made up one continuous conflict commenced by the Sergeant and renewed after the prisoner had twice fled. The determined manner too in which the aggression was carried on, under a mistaken sense of duty, probably, by the deceased, as evidenced by the severe stroke inflicted on the head of the prisoner, afforded to him strong provocation for retaliation, and, deprived, by its fracture, of the belaying pin which he had with him, the prisoner, though it would seem a powerful man himself, yet in conflict with another powerful

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man, and it may be, in some unreasonable fear for his life, used the knife which inflicted the mortal stabs.

It has been urged strongly and ably by Mr. Allan on behalf of the prisoner, 1st that the homicide committed in the present case was excusable as being committed simply in self-defence and under a strong and reasonable fear on the part of the prisoner for his own life, and 2ndly that even if the Court should not consider it excusable, still the act was done under such circumstances of strong provocation as only to call for the infliction of a light punishment.

We are unable to find in the circumstances of this case any thing to bring the crime of the prisoner within the category of excusable homicide in self-defence. The general doctrine on the subject is that however complete the right of defence may be, yet being founded itself on necessity, it cannot extend beyond this foundation, or, in other words, it cannot be exercised in any case or to any degree which is not necessary. The same doctrine has been laid down in the following words: "He who in the case of a homicide by his hand happening in the course of a mutual conflict wherein he was engaged would excuse himself on the ground of self-defence, must show that before a mortal stroke given he had declined any further combat and retreated as far as he could with safety, and also that he killed his adversary through mere necessity and to avoid immediate death." In the present case we can detect no such necessity; provocation there undoubtedly was, but no degree of provocation can excuse the taking of life though it may palliate the enormity of the crime. We, therefore, after due consideration of the remarks of the pleader and of the authorities cited by him, consider that the plea of excusable homicide is not made out.

Looking, however, to the evidence of the record, we are clearly of opinion that the provocation noticed by us above was in law, a sufficient provocation, and that the fatal strokes were all clearly traceable to the influence of passion arising from it. The facts that the stabs were in number more than one, and that the deadly weapon was resorted to not at the outset of, but after the conflict had commenced, do not affect the matter, inasmuch as the repetition of the blows and the resort to the deadly weapon occurred, whilst the parties were heated with the contest and when their passions were up and when there had been no time for passions to subside and reason to interfere. Neither do we think that there is any ground for the supposition that the prisoner came on shore determined to quarrel with some one or other. He had his ordinary sailor's knife with him as had William White, and it appears to be more or less the custom of sailors of American vessels to carry this instrument about with them, a practice which though objectionable is not at present illegal; the belaying pin too which he carried with him

and which has been produced in this Court, was in no sense a formidable weapon. Moreover as the first aggression was, as above observed, made upon, and not by him, these facts cannot affect the light in which the prisoner's crime must be regarded by us.

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Case of BRAMIER *alias* BOUSICK.

Such is the view we take of the case. It becomes unnecessary for us to determine whether the prisoner was perfectly sober or slightly intoxicated at the time of the occurrence of the crime, a point which, had there been any question regarding the intention of the prisoner, would have required a clear determination by us.

Altogether then looking to all the circumstances of this case and to the law applicable to it, we find the prisoner guilty of culpable homicide or, to use the language of English and American Law, of manslaughter, and we sentence him, under the provisions of Section 7, Regulation XII. of 1825, to (7) seven years' imprisonment, with labor in irons.

PRESENT:

J. H. PATTON, Esq., *Judge* AND H. V. BAYLEY, Esq. *Officiating Judge.*

GOVERNMENT

versus

NIDHEERAM MUNDUL.

Jessore.

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Case of NIDHEERAM MUNDUL.

The zillah Judge recommended a sentence of imprisonment for life, the instrument with which prisoner killed his mother and wife being at hand; the prisoner's character being good; there being no malice aforethought; he

CRIME CHARGED.—Wilful murder of Roshoo Bewa on the 29th of September, 1858 or 14th of Assin, 1265, B. S. and also wilful murder of Menoka Bewa by wounding her on the 29th of September, 1858, or 14th of Assin, 1265, B. S. from the effects of which she died on the 30th of September, 1858, or 15th of Assin, 1265, B. S.

Committing Officer.—Mr. A. J. Bainbridge, Joint Magistrate of Gopalgunge.

Tried before Mr. W. S. Seton-Karr, Officiating Sessions Judge of Jessore, on the 12th November, 1858

Remarks by the Officiating Sessions Judge.—The facts of this case are clear and simple. The prisoner was making mats when his wife asked him, as she had often done before, what was the tale of his day's work, on which he snatched up the mallet produced in Court, which happened to be lying near him, and made at his wife. His mother came to the rescue, whereupon he struck her to the ground; he then pursued his wife who was running away and when she tripped and fell, he struck her twice when on the ground. The mother died almost instantaneously, and the wife died at the thannah where notice

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having confessed; and that sentence of death should be reserved for cases of a deeper dye.

The Nizamut Adawlut sentenced the prisoner capitally, considering that he had killed first his mother and then his wife in a manner shewing a malicious intent to kill.

was immediately given, never having recovered consciousness in the interval. The above facts are taken from the evidence of witnesses Nos. 1 to 3 and 16 and 17, and from the confessions of the prisoner before the police, before the Joint Magistrate and before the Sessions Court. The prisoner admits that there had been a slight quarrel between him and his wife the day before; and before the Joint Magistrate he accounted for his violence by saying that his wife had made indecent gestures at him. He repeated this in the hearing of No. 18.

The evidence of the Civil Surgeon shows that the injuries were the cause of death. Both skulls were fractured, and that of the mother completely; considerable force must have been used and death was probably instantaneous in one case. In the other the deceased might have survived some hours in an unconscious state. All this tallies exactly with the direct evidence to the violence used.

There being no sort of question as to the facts above described, the point is, to what does the offence amount?

The Jury found the prisoner guilty of the charge of wilful murder and I agree with them.

I admit that there is no trace of previous malice, that the attack was sudden, and that the weapon was not fetched from elsewhere but was lying close at hand. But the provocation was slight, the instrument wherewith the double homicide was effected is of *sunder* wood, and weighs at least 3 pounds, the blows were struck with great force and the wife was struck when she was down. The mode in which resentment was testified, does not bear a reasonable proportion to the provocation given. The offence fairly falls within the category of murder. On the whole, taking into consideration the man's previous decent character, the absence of malice aforethought, his ample confession and the whole circumstances of the case, I do not consider that his guilt calls for a capital sentence, for such sentences should be reserved for guilt of a deeper dye. But I recommend that he be sentenced to transportation for life beyond seas, with hard labor in irons.

Remarks by the Nizamut Adawlat.—(Present: Messrs. J. H. Patton and H. V. Bayley.) The prisoner killed his wife and his mother; his wife because she had asked him the day before, how much matting he had made and the mother because she interposed to rescue her son's wife. The prisoner further says to the Magistrate that the wife indecently exposed herself to him on the previous day, and on the day of the murder. The pestle he used was three pounds' weight. The death of the mother was almost instantaneous and of the wife very shortly after the blows. The blows on the wife were repeated after she had stumbled and fell. The medical evidence shews that the blows inflicted by the prisoner, caused death; "that great force must

have been used," "probably more than one blow." "Both skulls were fractured. The skull of the first woman" (the mother's) was completely smashed in."

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The Sessions Judge does not recommend a capital sentence on account of the prisoner's "previous decent character," "the absence of malice," and the attack being "sudden," and "the weapon lying close at hand."

We cannot think the attack to be sudden, or malice to be absent when the cause of provocation was not only next to none, if any, but one of the previous day; when the prisoner's own mother is killed interposing to save her son's wife; and *after* that, the wife has her head beaten in after having fallen in running away from, and being pursued by, her husband.

We consider the purposes of justice require the extreme penalty of the law in this case of double and wilful murder. We sentence the prisoner to be hanged.

PRESENT:

C. B. TREVOR AND H. V. BAYLEY, ESQS.,
Officiating Judges.

GOVERNMENT
versus
HARRADHUN BAGDI.

Hooghly.

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Case of HARRADHUN BAGDI.

Held that a party whilst his own trial is going on, that is, before his own sentence has been passed, cannot be made a witness, he cannot in short be on his own trial for an offence and a witness

CRIME CHARGED.—1st count, dacoity on the night of the 31st March, 1857, in the house of Kartickchurn Ghose of Sadupoor, thannah Salimabad, zillah Burdwan; 2nd count, dacoity on the night of the 22nd July, 1857, in the house of Odoitochurn Kurmokar of Russick Khund, thannah Royna, zillah Burdwan; 3rd count, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Baboo Chunder Sekur Roy, Deputy Magistrate under the dacoity Commissioner at Hooghly.

Tried before Mr. J. E. S. Lillie, Additional Sessions Judge of Hooghly, on the 3rd June, 1858.

Remarks by the Additional Sessions Judge.—First count, two approver* witnesses implicate the prisoner in this dacoity; but the record affords no sufficient corroboration. Second count, the same approver-witnesses implicate the prisoner in this dacoity also. The record shews that one Sanatun Bagdi was apprehended through the informa-

* Wit. No. 1, Teencowree Bagdi.
" " 2, Ganesh Bagdi.

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* *Nuthee* No. 25, page 3.
† Page 34.
‡ Page 64.
§ Page 76.

tion* of Haradhun chowkeedar and that he confessed in the mofussil,† criminating the prisoner, and the two approver witnesses Pitumber‡ *alias* Ruboo Chundal and Madoosoodun Kamar§ also confessed and criminated the prisoner and approver-witness No. 2. The prisoner also confessed and named the above associates. Witnesses Nos. 3 and 4, now prove that the prisoner's confession was free and voluntary. The confession is full and unreserved, and is satisfactorily confirmed by the testimony of the approver-witnesses and by the record. The record was received after the completion of the confessions of the two approvers. Third count, the prisoner is denounced in two other dacoities by approver-witness No. 2.

The prisoner, after having averred before the Deputy Magistrate that there is no enmity between himself and the approver-witnesses, affirms in this Court that he refused to associate with approver-witness No. 2, because the latter went off with his, prisoner's, mother-in-law's sister. The prisoner further affirms that he never confessed, and pleads that he was released by the Magistrate in the Russick Khund dacoity (second count.) Witness No. 5, deposes favorably of the prisoner's character; and witnesses Nos. 6 and 7 are unable to give an opinion.

I consider that proof on the second count is clear and convincing. There could have been no collusion: and it is evident that there were no malicious motives.

Approver-witness No. 2, has not yet been sentenced by the Nizamut Adawlut, but his evidence is receivable with reference to the provisions of Regulation X. of 1824, and with reference to the Nizamut's precedent in the case of Chundra Dome and another at page 491, part II for the year 1852. I convict the prisoner of the crime of dacoity, and sentence him to be imprisoned for fourteen (14) years with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor and H. V. Bayley.) The prisoner Harradhun Bagdi has been found guilty by the Additional Sessions Judge, of having committed a dacoity in the house of Odiotochurn Kurmokar of Russick Khund, in zillah Burdwan, and has been sentenced by him to be imprisoned for (14) fourteen years with labor in irons in banishment, from this sentence the prisoner has appealed.

The charge is brought home to the prisoner by the evidence of Teencowree Bagdi, and Gunesh Bagdi, two approver-witnesses; and their evidence is, in the Judge's opinion, corroborated by the facts that one Sonah Bagdi confessed in the mofussil, criminating the prisoner and the two approver-witnesses;

Against others for that offence at one and the same time; such union of prisoner under trial and witness is incompatible with all principle, it is necessary that the prisoner either be first sentenced and then made an approver of in the usual mode, or that he be made a witness in the mode prescribed by Regulation X. of 1824, that is a tender of pardon be first made to, and accepted by, the prisoner.

Prisoner released, the evidence of one approver witness being inadmissible, and that of the other approver witness being unconfirmed in any essential manner so as to connect the prisoner with the dacoity with which he stands charged.

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and that two other persons, Petumber and Muddoosoodun, also confessed criminating prisoner and approver-witness, No. 2, the prisoner also confessed in the mofussil and named the above parties as his associates in the crime, but they were all released at the time by the Magistrate.

We observe that the Sessions Judge remarks, that at the time that the evidence of witness-approver No. 2, was given, he had not been sentenced by this Court; he was in fact under trial, now, as remarked by us in a recent case,* a party whilst his own trial is going on, that is, before his own sentence has been passed, cannot be made a witness; he cannot, in short, be on his own trial for an offence and a witness against others for that offence at one and the same time; such union of prisoner under trial and witness is incompatible with all principle, it is necessary that the prisoner either be first sentenced and then made an approver of in the usual mode, or that he be made a witness in the mode prescribed by Regulation X. of 1824, that is a tender of pardon be first made to and accepted by the prisoner. The evidence of the approver witness No. 2, cannot consequently be considered by us as legal evidence in this case.

* Government *versus* Kitabdhee *alias* Kitbah.

There remains then, against the prisoner, the evidence of one approver-witness, confirmed by the mofussil confession of three parties who were released at the time, for the charge of having committed the crime to which they confessed implicating him, and a mofussil confession of the prisoner himself which led to nothing.

The confession of the prisoner before the dacoity Commissioner is proved, but on his trial he pleads not guilty, and he brings evidence to good character.

We think that the evidence of the one approver-witness against the prisoner is in no essential manner confirmed, so as to connect the prisoner with the dacoity with which he stands charged and that it is, therefore, insufficient for his conviction. We accordingly acquit him and direct his immediate release.

PRESENT:
A. SCONCE, ESQ. *Judge*.

GOVERNMENT AND ANOTHER
versus
DIDAR BUX SHEIKH.

Rungpore.

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Case of DIDAR BUX SHEIKH.

A *pykar* received advances to buy and deliver cocoons for a silk filature. He forwarded *chelans* of cocoons to the factory, with the values attached, which were in some instances cut down by the manager. There was no proof at all as to the precise terms of engagement between the two parties; and no conviction could therefore be had, under Section 6, Act XIII. 1850, of any definite breach of a trust, whose nature was undeterminable. And the prisoner not having been called upon to file his own account of the

CRIME CHARGED.—1st count, that the prisoner, being employed by Mr. Walter Dodgson of Nowadpurah Filature as an Agent and entrusted with money for employment in the purchase of cocoons, did, between the 13th January and the 2nd of June, 1858, fraudulently apply, use and dispose of the sum of Rs. 550-3-9 contrary to his duty in that behalf.

CRIME ESTABLISHED.—Felonious stealing under Section 6, Act XIII. of 1850.

Committing Officer.—Mr. A. J. Jackson, Officiating Joint Magistrate of Bograh.

Tried before Mr. F. A. Glover, Officiating Sessions Judge of Rungpore, on the 20th September, 1858.

Remarks by the Officiating Sessions Judge.—This is a commitment under Act XIII. of 1850 and the circumstances are as follows.

The prisoner is a *pykar* in the Nowadaparah silk factory and was employed by the manager, Mr. W. Dodgson, to purchase cocoons from early in January up to the 2nd June, 1858, on which latter date, suspicion was excited against him and he was desired to come into the factory with his accounts. He received the sum of Co.'s Rupees 2,200, against which he delivered cocoons to the value of Co.'s Rupees 1649-12-3, leaving a balance of Co.'s Rupees 550-3-9 unaccounted for. The prisoner was many times sent for, but always evaded coming and at last left his house; he was arrested on another man's premises on this case being instituted before the Joint Magistrate.

The prisoner who pleads not guilty, states in his defence, that the sum alleged is not due from him, that he sent his *hathchittas* (receipts for cocoons sent) to Mr. Dodgson for his signature, but that they were not returned, and that he never absconded at all; he admits having received the Co.'s Rupees 2,200.

Wit. No. 1, Kony Singh.

Witness No. 1, proves that the prisoner was a servant of the factory and that he was repeatedly sent for by Mr. Dodgson, but refused on one pretext or other to come in, and at last absconded.

Wit. No. 2, Bitahun Roy.
„ „ 3, Mahatab.

Witnesses Nos. 2 and 3, prove the fact of the prisoner being a servant of the factory entrusted with the purchase of cocoons, and heard that when he was sent for to make up his accounts, he absconded.

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transactions in question, covering a space of several months, there was not proof to convict under Section XI of fraudulent misapplication of money.

Witness No. 4, who is the godown-sircar attached to the Nowadparah silk factory, proves the entries in the factory books and attests the cocoon *chelans* (Nos. 1—24,) which were sent in by the prisoner during the time he was employed in the mofussil, for all the *chelans, hathchittas,* were given to the prisoner.

Wit. No. 4, Chuitun Churn.

Mr. W. Dodgson the "*de facto*" prosecutor in this case, being present in Court, his evidence was taken regarding the *hathchittas,* said by the prisoner to have been sent into the factory and to have been retained by the manager. Mr. Dodgson's evidence goes to show, that no such papers ever came into his hands

The prisoner's defence is, that he has not been credited with the proper value of the cocoons sent, that he sent in his original *hathchittas* (which had become very old and torn) with copies to his master, Mr. Dodgson, in order, that he might sign and return the copies, the originals being from age unfit for use; but that Mr. Dodgson kept the papers and never returned them. He called a number of witnesses, who deposed, that during the month of Asar, the prisoner made several payments to them on account of cocoons, and that they had never heard of his having absconded.

Edoo the Burkundaz, by whom the prisoner said he had sent his *hathchittas,* deposed that the prisoner made, in his presence, copies of all his old *hathchittas* and gave him the copies to take into the factory. Witness did so but the papers were returned to him by the *amlah,* who said that the documents being copies only were useless and that the Saheb would not sign them. Mr. Dodgson was away from the factory at that time.

The *futwa* of the law officer convicts of the crime charged.

In this finding, which is equivalent to a conviction of felonious stealing, I agree. The amount advanced to the prisoner is not denied. The cocoon *chelans* show Co.'s rupees 1649-12-3 the value of the silk sent in by the prisoner, and the balance is that mentioned in the calendar. The prisoner's defence is not in the least substantiated, and it is quite clear, that he has the *hathchittas* in his hands at this moment, although, as of course, they would be counterparts of the cocoon *chalans,* he will not produce them.

It is proved satisfactorily (1) that the prisoner was entrusted with certain sums on behalf of the factory, (2) that his accounts show a deficit of over 500 rupees, which deficit he is entirely unable to account for, and (3) that although repeatedly sent for, he refused to come in and adjust the balance against him.

I convict the prisoner of felonious stealing under Section 6,

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Act XIII. of 1850 and sentence him to 2 years' imprisonment with labor without irons, and to pay a fine of Co.'s rupees 550-3-6 under Act XVI. of 1850 for the benefit of the party robbed.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Sconce.) Prisoner has been convicted by the Sessions Judge of "felonious stealing under Section 6, Act XIII. of 1850, and sentenced to two years' imprisonment with labor and to pay a fine of Rs. 550-3-6 under Act XVI. of 1850, for the benefit of the party robbed." Prisoner was employed by, or entered into an engagement with, Mr. Dodgson of the Nowadparah silk factory to purchase cocoons, advances being from time to time made to him for that purpose; and the charge upon which the prisoner has been convicted is based upon the fact that between the months of January and June of the present year, the sum of Rs. 2,200 by successive payments was advanced to Deedar Bux, and that the factory-accounts after giving him credit for the value of cocoons supplied, show a balance unaccounted for of Rs. 550-3-6. The conviction being had under Section 6 of the Act, necessarily purports that the money in question had been entrusted to the prisoner for the special purpose of purchasing cocoons on behalf of Mr. Dodgson, and that he had fraudulently applied it to another purpose. What then are the conditions of the trust, in the performance of which the prisoner is held to have fraudulently misapplied the money entrusted to him? The witnesses for the prosecution speak of the prisoner as a *pykar* and as a servant of Mr. Dodgson. One witness said he received Rs. 5 a month, another Rs. 12; another Chytun Churn who received and weighed the cocoons delivered by the prisoner, knew nothing either of the amount of the prisoner's remuneration or of the terms of his engagement. Prisoner is called generally a servant; but obviously he was not deputed by the owner of the factory to go with his money into the villages and purchase cocoons on the owner's behalf. Rather it is to be gathered from the record that the prisoner was a *pykar* or dealer; that he acted on his own behalf and risk, and for the execution of his engagement (of whatever nature) with his principal, that he advanced money on his own account to under-*pykars* by whom he was supplied with cocoons. The payment of an advance does not necessarily import a trust. It may be equivalent to a loan: and therefore it is essential to distinctly characterize the nature of the payment.

As to the general understanding between the parties there is no difficulty: there was a payment of money on the one side, which was to be followed by a delivery of cocoons on the other: but was this transaction of the nature of a trust, as contemplated by Section 6, Act XIII. of 1850? For the prosecution a series of *chelans* have been filed, representing the succes-

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sive deliveries made by the prisoner. These *chelans*, as drawn by the prisoner, set forth both the quantity delivered and the price or value for which he claimed credit. But, on delivery, both the quantity and value were occasionally altered by endorsements on the back of the *chelans*. On one occasion Rs. 27 were deducted on account of the inferior nature of the silk, on another Rs. 15 on account of the higher price charged by Didar Bux beyond what the owner of the factory allowed; in all about Rs. 74 were deducted, while the sum of Rs. 5 nearly was added on three occasions in excess outturn. Thus clear proof of the nature of the engagement entered into between the owner of the factory and the prisoner becomes essential to the determination of the character of the trust, upon which this trial is founded. The deductions made at the factory might have been twice or three times as much as the sum actually disallowed: but we have no information as to the mode of adjustment by which the prisoner as *pykar* in his dealings was to be bound, and we have no authority, as the case stands, for converting a misunderstanding in the account of the parties concerned into a breach of trust.

For these reasons, it seems to me, a conviction under Section 6, of the Act, cannot be sustained. Possibly from the facts described, the proceedings of the zillah Courts should have been rather guided by Section XI. which meets the case of a fraud determinable in the course of a series of transactions covering several months. In such a case it is laid down, that proof of a gross deficiency in the accounts of any trustee, shall be evidence of the offence charged until such deficiency is otherwise explained. Now the basis of an offence arising under the circumstances described in this Section is an account: and what appears to me to be a material defect in the present proceeding is, that the prisoner was not formally called upon, within a definite period, to furnish an account, so as to give him an opportunity of setting forth his own version of the transaction that had passed between him and his principal. In the case of Gungadhur Sircar reported at page 390, Part I. of the cases determined in this Court in 1853, it was remarked: "Had the original accounts as kept from day to day by the prisoners themselves, been produced, and had it been quite clear that even at their own rates of charge for purchases, a gross deficiency remained upon the amount of advances which had been received by them, then there would have been such presumptive evidence as is warranted by Section XI. of the Act, of fraudulent embezzlement or appropriation." So in the present instance, if we had had accounts rendered by the prisoner, we might have had evidence from his own hands of a gross deficiency, which would have brought him within the offence provided for by Act XIII. of

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1850: but as it is, it seems to me the prisoner must be acquitted.

I accordingly reverse the conviction of the Sessions Judge and direct the prisoner to be released.

PRESENT:

C. B. TREVOR AND H. V. BAYLEY, ESQS.,
Officiating Judges.

GOVERNMENT AND BUDDHUAH BOY ALIAS MORADUN

versus

EDUN (No. 26,) RAHUT (No. 27,) ELANCHEE (No. 28,) HEYAT BUKSH ALIAS CHUMUN (No. 29) GOOLRUNG (No. 30,) ELIHEE JAN (No. 31,) AND GOUREE (No. 32.)

Bhaugulpore. 1858. December 11. Case of EDUN and others.

Held that mutilation by castration is both by English and Mahomedan law as followed by our Courts, a felony or heinous offence, and that the Circular of the Court of Nizamut Adawlut dated 27th April, 1796, which is still in force, has recognised it as such.

Prisoner No. 26 found guilty of being a principal in the castration of, Buddhuah and prisoners Nos. 27, 28, 29, 30 and

CRIME CHARGED.—Prisoner No. 26, 1st count, purchasing a child by name Buddhuah *alias* Moradun of the age of eight or nine years, for 3 Rupees and a piece of cloth, in the city of Monghyr; 2nd count, purchasing the child, for the purposes of mutilation; 3rd count, principal present and causing Rahut to make the child a Eunuch and thereby endangering the life of the said child; prisoner No. 27, 1st count, with mutilation in having with a razor forcibly cut off the genital organs of a child aged about eight or nine years called Buddhuah *alias* Moradun, thereby endangering the life of the said child; 2nd count, making the child abovenamed a Eunuch; prisoners Nos. 28 to 30, accomplices in the castration of the said child; Elanchee No. 28, by forcibly holding the child, Goolrung No. 30, by holding a light and Heyat Buksh No. 29, by being present and aiding, generally to enable Rahut to see and mutilate the child; prisoners Nos. 31 and 32, 1st count, being accomplices in the aforesaid crime; 2nd count, being accessaries before and after the fact.

Committing Officer.—Mr. O. Toogood, Officiating Magistrate of Monghyr.

Tried before Mr. T. Sandys, Sessions Judge of Bhaugulpore on the 9th September, 1858.

Remarks by the Sessions Judge.—The Magistrate makes this commitment accompanied by his No. 407, of 26th July last, copy of which is herewith annexed.* However much I may

* *Copy of a letter from the Officiating Magistrate of Monghyr to the Sessions Judge of Bhaugulpore No. 407, dated 26th July,* 1858.

In my letters Nos. 209 and 219 dated the 13th and 19th of April last, I did myself the honor of bringing to your notice and that of the Govern-

agree with him in some respects, I shall not follow him through the discursive character of his communication, which more pro-

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ment, the extent to which the atrocious system of slavery exists in this part of the country, and I committed the Cazee or Mahomedan law officer of this city, his clerk and a brothel-keeper for trial to the Sessions.

It is now my duty to bring to your notice and that of the Government, a still more infamous crime than that which I have mentioned above and one which is equally widespread; it is that of making boys Eunuchs, which system prevails throughout the country nearly as much as slavery, of which indeed it is a sequence, and on the 24th instant I committed the prisoners noted in the margin* to your court for trial.

* Sic in original.

I felt perfectly sure that a Mahomedan population which encourages in every way possible the wickedness of slavery and especially amongst its upper classes, who weigh their respectability, position and standing in society by a system of polygamy and the number of slaves which they keep, would be equally desirous of maintaining the state of eunuchs, which is so intimately associated with the misery and crime enacted daily in their zenanas, which is still considered a distinguishing mark of greatness amongst them, and from its prevailing in the courts of Nawabs and specially in that of Moorshedabad, the chief officers of which are not only the guardians of the women's apartments but the principal ministerial advisers under the Governor-General's agent of that court, would perhaps, from its existence there, lead many to the supposition that the system has the tacit permission of the Government (especially from the fact that the Nawab's court is recognised on sufferance only,) in the same way that the Cazee justified his acts under the Regulations in force, which opinion I regret to find, the Sudder Court by its decision of his acquittal has endorsed, after keeping the case upwards of two months pending in its court. I committed the parties on the 19th of April and the warrant of acquittal has not yet reached me, though the old brothel-keeper who knew no better and purchased the children under the authority and sanction of the Cazee, (whose duty it was to explain to her and others the illegality of the transaction,) has I understand, been convicted, but I would here remark that generally speaking, the Eunuchs in the court of the Nawab of Moorshedabad are imported, and though such importation of slaves, for such they certainly are, is a penal offence, yet they are in a widely different position from those persons who are the free-born subjects of the State and made the prey of separate and distinct gangs trading on their own account for dissolute purposes, amongst which may be classed the heinous crime of sodomy. It is to these crimes in particular I would now draw your attention.

31 of being accomplices in the above crime, and sentenced as follows: prisoner No. 26 to 7 years' imprisonment with labor and irons; prisoners Nos. 27 and 28 to 5 years with labor and irons, and prisoners Nos. 29, 30 and 31 to 3 years with labor commutable to a fine of 30 Rs. each payable within 15 days.

Some time ago I issued verbal instructions to Mr. Jadowin the Darogah of this city, who has exerted himself considerably in this matter, and on the 14th instant he reported that six persons of whom four were Eunuchs were present. I took their depositions on oath: it will be seen from their statement that all are residents of this city, that they are ostensibly employed to go about and dance on the occasion of a son being born to either a Mahomedan or Hindoo. I have also reason to believe, that if a child be born deformed, it is frequently given to them. They have the entrée to the apartments of the women of both Hindoos and Mahomedans and prostitute themselves when opportunity offers, this they confessed. Some of these Eunuchs dress like women and others like men; they are hideous to look at: they state that the operation was performed on them by Eunuchs

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perly belongs to the consideration of superior authorities, but restrict myself briefly to the simple facts in connection with the

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and that poverty and the fact of their being orphans led to their being coaxed away by other Eunuchs, for the purpose of their being so made; representation also being made to them of the life of pleasure and freedom from care they would hereafter enjoy. They also stated that now Eunuchs are not made and have not been for 8 or 10 years, but that still they are to be found all over this part of the country; and, that indeed, in Patna there is a portion of the city called "the place of the Eunuchs." Not being able to get anything more out of these people, I sent them away, but felt convinced that they had told me only as much as they chose and not the whole truth. I believe that they had performed the operation on others.

Since the examination of the abovenamed Eunuchs, I have been endeavouring to get hold of some boys recently mutilated, and on the 18th instant, the same Darogah brought me a child of the age of about 8 years. It appears from this child's statement he is the son of a Hindoo by name Nainsook and was formerly called by the Hindoo name of Buddhuah,but now has been made a Mahomedan and is therefore called Moradun. The father is a weaver by trade and resides in the city of Patna and sold his son about four or five months ago to Edun, the chief of the Eunuchs of this city: the sale took place in the Burra Bazar and the price paid for the child was 3 Rupees and a piece of cloth. The father completed the sale of his son and the transaction took place with the knowledge and consent of the Naib Darogah, or second chief police officer of this town, a Mahomedan, in the presence of a woman he had in keeping, who informed the parties that now-a-days it was not necessary to commit the transaction to paper or to register the same, notwithstanding which Edun set out for the purpose of registering the sale before the Cazee, but afterwards thought better of it. The sale was not reported to me and the father shortly afterwards returned to his home, well knowing that his son was purchased for the purpose of being made a Eunuch. Some time afterwards, Edun, the purchaser, took the little child to a village called Tetrahut about 6 miles from the thannah of Soorujgurha and 24 miles from this, and there he was mutilated, the genital organs having been entirely cut off with a razor, by one Rahut, a Eunuch, residing in the village of Phulwulpore in the division of the police station of Hilsee in the district of Patna, who, it appears, had come to the village for the express purpose. Elachee eunuch holding the child and Edun, Goolrung and Hayet Bux, also Eunuchs, were present at the time. In fact these four appear to belong to the same gang. The child according to their statement recovered about one month after and a thank-offering having been made upon the successful result of the operation, which appears from the statement of the Eunuchs, corroborated by the deposition of Dr. Duka, the Civil Assistant Surgeon, to be attended with considerable danger, the child returned to Monghyr and remained here, until the morning of the 15th instant, when, after my taking the depositions of the above mentioned Eunuchs on the 14th idem, it was deemed advisable by Edun and others to remove the child in charge of one Chummun, also a Eunuch, to the house of an old woman at Soorujgurha, who was familiarly but not correctly termed the grandmother of Chummun. The child remained in this house of concealment for three days, when he was discovered by an agent of Mr. Darogah Jadowin and brought before me: the child states he has a sister only who is married and residing at Gorruckpore.

I can find no law touching upon the subject of making Eunuchs framed by the Government of India, perhaps resulting from the fact of this atrocious crime, another remnant of Mahomedan barbarism, never having been

trial itself, and the long unchecked, though always proscribed evils, they bring to light.

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investigated by any Magistrate or brought to the notice of the Government, but there can be no doubt that the system of slavery is the cause of this and many other crimes now universally prevailing throughout these dominions. A great deal has lately been said on the system of caste and the danger to the governing power of interfering with this miscalled religious question, which really and truly has nothing substantially to do with it; for caste is merely a class-word, applicable to the several classes in which society is divided, not necessarily the identification of a religion. Here is an example of a father, a Hindoo, having sold his only son to a Mahomedan, a Eunuch, for the small sum of 3 Rupees and a piece of cloth, for the purpose of being made a Eunuch and a convert to the Mahomedan faith: this is one cause out of hundreds I can adduce to the same effect.

In my report on slavery, I proved the fact of the father of a Rajpoot, the kingly caste, having sold his daughter aged 7 years, to a Mahomedan woman a brothel-keeper of this city, for the sum of Rupees 12, for the period of 90 years, for the purposes of prostitution under the authority of the Cazee, the Mahomedan law officer of this city; though slavery is not permitted by Hindoo lawgivers, disgracing not only his own family but his caste and Hindooism itself, and the same Cazee the expounder of the Mohamedan faith, selling into slavery and prostitution children of tender age and of his own creed, for periods of 90 years and upwards, and the progeny, should there be any, for ever. These facts will shew the true estimation of caste in India, and what the moral and social position of Hindoos and Mahomedans really is, though the followers of each creed have been encouraged, and are now ever ready to cry out against fancied encroachments of the British Government upon their so-called religious prejudices. Now who is the Cazee? He is the brother of my first assistant, the principal native judge of this district, who also exercises the full powers of a Magistrate under me and receives a salary of 600 Rupees per mensem. Not only did this Cazee who lives in the same house with his brother, (both the brothers keep slave girls, and some of their progeny are employed in the Principal Sudder Ameen's Court,) accept these deeds, but he registered the same, taking a fee for such registration and afterwards filed the document in your court for the purposes of record hereafter, and now here is evidence before me of the fact; that the registration of the deeds of the sale of children for the purpose of making them Eunuchs, has hitherto been a common practice also in this district, and has only lately ceased, consequent upon the proclamations I have issued on the subject; for it is clear from the statement of Edun, that there was a hesitation expressed as to the bargain having been satisfactorily and legally concluded, and it was not until the parties had gone to the second police officer a Mahomedan (and an opium-eater) of the police station in this city, and narrated before him the particulars of the purchase, and until that police officer had told them that it was not now necessary to have a document drawn out and attested, that the purchaser felt he had not made a doubtful bargain, and to make the matter sure and prevent the child being reclaimed by the father, he hastened, as he states, to make him a Eunuch, thus effectually barring any claim which might be made hereafter.

Before concluding this report, I would earnestly beg your attentive consideration and that of the Hon'ble the Lieutenant-Governor of Bengal, to this and other horrible crimes, which are daily being committed under our very eyes, though without in many cases the possibility of their being brought to light. It perhaps may be considered hardly my duty to make

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Prisoners Nos. 26 to 31, are all Eunuchs, which, however, is rather too generic a term, as understood by Europeans, to give

any comments upon the present system of governing this vast extent of country, having in almost every district so many customs; and, indeed, I may say, peculiar local interpretations and workings of the regulations in force; but I cannot help respectfully submitting, that in my humble opinion, it is impossible for any administration to be properly conducted which has for its basis a code composed of Hindoo, Mahomedan and English laws, the principles of these three codes are so opposed to each other that they have never worked well and never can.

To allude to the police who should be the agents through which these atrocities are brought to light, would be but to echo the opinions which myself and others have so continually offered, but surely something could be done to assist the Magistrates by the employment of agents more alive to the advantages of good administration, and of persons who would shew by their actions, that they are not only desirous of drawing the salaries paid them by the Government, but also of associating themselves with the suppression of crime. I allude now more particularly to Moonsiffs, Sudder Allahs and Sudder Ameens. Do any of this class ever aid the executive? Do they ever bring to the notice of Magistrates abuses of the police or crimes committed by individuals? Do they identify themselves with the governing power? In truth, it may be said never, except perhaps for the attainment of a personal or pecuniary advantage, or to satisfy the revenge which an Asiatic delights to gratify. Holding this opinion, I would strongly advocate the withdrawal of all executive magisterial powers from native judicial officers, on the grounds of their being morally and physically incapacitated for the duty, supplying their places with European agency and that of Honorary Assistant Magistrates. If I may be permitted I would suggest, that the official designation of the native judicial officers as Moonsiffs, Sudder Ameens, Sudder Allahs and Cazees should be changed and English ones adopted; the retention of the former is accompanied with no advantage to the State, is misunderstood under the present regimé, and is associated with the power of a fallen dynasty, and thus calculated to mislead and work on the credulity of the subject. In further support of what I have now advanced, I may state that the extensive arrears which are now pending in the Civil Courts throughout Bengal, is another reason why they should no longer be associated with criminal jurisdiction. Civil cases remain undecided for years, breeding ill-will amongst the litigants, which descends with the disposition of the property to the heirs and there is scarcely a district in Bengal, in which it will not be found that the two principal landholders therein, have been contesting a case since their great grandfathers' time. In the principal Sudder Ameen's Court of Monghyr the cases pending decision, date from the year 1802.

The custom of Eunuchism appears to have been handed down from the Emperors of Delhi; for these Eunuchs state that formerly one of the officers of the Emperor's Court used to accompany them, levying a tax of one-third on their receipts which was paid into the Royal Treasury.

I have addressed the Commissioner of the division upon the subject of slavery and Eunuchism, and suggested that an asylum should be erected by private subscription, assisted by the Government, for the care of orphans both male and female; this being the only country in the world without such charitable institutions. Many Europeans and natives have already subscribed. I distinctly stated that as such a collection of orphans would necessarily be made up of different castes and creeds, it would be impossible to preserve such distinction. I should therefore educate the children with a view to their being serviceable to the State and consequently, in the

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any correct idea of their debasing pursuits and means of subsistence in this country. The prisoners, as well as many others of the same class, apprehended by Mr. Toogood, are in no domestic employ, but live in little colonies scattered about throughout these provinces, maintained as dancers, singers, importunants on every occasion of native festivity, when they are generally more oppressively successful with the Hindoo then the Moslem sturdy beggars and sodomites. I gather these particulars from examination of these people, carefully taken down in English by Messrs. Toogood and Wilmot, and as confirmed in the last respect also by the principal, Edun, prisoner No. 26, conviction for sodomy in the separate trial herewith accompanying and referred as required by clause 1, Section 2, Regulation XV. of 1814. Dr. Duka's examination and report of them also shews them to be a peculiar class. The operation by which they are emasculated, as was the case with the deserted, enslaved boy Buddhuah, is altogether so complete, that it gives a more feminine appearance to the countenances of its victims, than is the case by the more incomplete process. Some of them still further imitate a feminine appearance by adopting the female style of dress. Their ranks are readily recruited, independant of kidnapping and cajoling, if not worse practices, from that fruitful source of every other mal-practice in this country, the sale of infants and children by their unnatural parents and guardians, and like every other vice, in this vice-deluged country, it adopts as much religious ceremony on the occasion as ever thug or thief does. The operation on the boy Buddhuah, did not take place until after considerable consultation and ceremony, and from the number of Eunuchs called together on the occasion, it is evidently made an important one of by them; both expensive and difficult, and perhaps if the truth were known, often fatal, and as easily suppressed, with the helpless abandoned little victims so completely and secretly in the Eunuchs' power, that it is preposter-

Christian religion which that State professes. Neither would such an asylum be opposed to Mahomedan law, though this question appears to me of little importance, for the guardianship, or more properly speaking, tutelage of minors who have no legal guardian or executor, devolves on the Cazee or his executor and applying the principles of Mahomedan law to circumstances as they exist in this country, the head of the Government is the Cazee and the Magistrate of the district may be the legal representative. The system of slavery and its sequence Eunuchism, now so general, with which is entailed so much misery and crime, is opposed both to the Christian, Hindoo and Mahomedan religion, and the ruling power should be armed with authority to treat all such cases as felony. The latter religion forbids distinctly the free-born subjects of the State being sold into slavery. I quote in support of this statement the authority of one of their greatest law-givers, the Blackstone of India, viz. the compiler of the Alumgeeree who states—"the sale of a free-born man is not lawful at any time either in times of famine or any other time."

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ous to suppose, the slave-bound neophytes could have had any choice in the matter, even if their tender years admitted of their exercising any, for, I regard the boy Mungra's (witness No. 2,) alleged resistance to the proposed operation on himself as exceptional, if not a tale got up for the occasion. Most probably the operator declined the risk of the operation on a boy of his advanced age and size.

Some four or five months ago, Edun purchased the two boys Buddhuah 8 to 9 years of age for Rupees 3, and Mungra *alias* Nasir 12 years of age, for Rupees 2 from their father Nainsook Joolaha of Patna, who had come to Monghyr for the purpose, and since then has not been heard of. Edun paid the operator Rahut prisoner No. 27, 10 Rupees for the single operation on the former, whilst the agreement made was Rupees 12 for each boy. Edun styles himself a sirdar amongst his class. Hindoo children seem to be mostly the victims of the vile system, and " when mutilated as Eunuchs, they become Mahomedans, and change their names accordingly. Edun wanted the police to recognise the purchase and, for this purpose, took the parties before Atha Hossein prisoner No. 33, the Mahomedan Naib Darogah of the town, and his concubine, but was sent away with the assurance, that anything of the kind now-a-days was unnecessary.

Edun's defence before the Magistrate

Buddhuah prosecutor.
Edun's defence before Magistrate.
Witness No. 18, Akbur Allie.
Witness No. 19, Shibloll Singh.

Some time after, Edun took the two children, thus become his helpless slaves, twenty-four miles away from Monghyr to Soorujgurra, where, through witnesses Nos. 5 and 4, husband and wife, residing with the Eunuch Elahee Jan prisoner No. 21 at Titurhut 6 miles from Soorujgurra, a general meeting of Eunuchs at Elahee Jan's house was planned. Here the operator Rahut prisoner No. 27, called from the Patna district, and all the other Eunuch prisoners including Gouree, prisoner No. 32, an associate, formerly a Kuhar, now a Mahomedan, assembled, when the operation took place on the boy Buddhuah one night in Bysack, (April last), Rahut performing the operation under Edun's orders, whilst Elanchee, prisoner No. 28, Heyat prisoner No. 29, Goolrung prisoner No. 30, and Elahee prisoner No. 31, aided him, and Gouree, prisoner No. 32, was present in the house throughout. The boy is said to have recovered in about a month, was then brought back to Monghyr, remained there till 15th July last, but after the Eunuchs' examination (preli-

All prisoners' statements before Magistrate.
Buddhuah Prosecutor.
Wit. No. 1, Meghan boy.
„ „ 2, Mungra.
„ „ 3, Meerun.
„ „ 4, Chotan.
„ „ 5, Musst. Dhuheea.

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minary) by Mr. Toogood on 15th Idem, was smuggled back again to Soorujgurra, where three days afterwards he was discovered by Mr. Darogah Jadowin (para. 5 of Mr. Toogood's letter.) Dr. Duka Civil Surgeon examined Buddhuah and found the operation to have been completely and recently performed. He observes: "It was not without some trouble that the examination of the emasculated child was accomplished, owing to still existing pain or excessive timidity, no doubt from the recollection of recent sufferings, the child would hardly permit being touched, and the most kindly assurance that no harm is meant to him, could not stop his tears."

Dr. Duka's No. 26, dated 24th July, 1858.

The Eunuch prisoners and Gouree's statements before the Magistrate, amount to a full acknowledgment of the facts thus narrated, whilst their defences before this court either recognize or do not ignore them. In short they boldly plead "*guilty*" in accordance with the practices of their class. The Naib darogah Atha Hossein pleaded "*not guilty*," citing witnesses.

I was kindly assisted in this trial by Baboo Prosunnocoomar Tagore Buhadoor, and Mr. J. Dacosta, Officiating Principal Sudder Ameen of Monghyr, sitting as assessors under Regulation VI. of 1832, whose recorded opinion is as follows.

"By the evidence of witnesses and the voluntary admission of not only Edun and Rahut the principal offenders, but that made by Ellahee Jan also, who is committed to take his trial with Heyat Bux and others on the charge of being an accomplice, we unanimously find Edun No. 26, guilty of being the principal present and causing Rahut to make the child a Eunuch and thereby endangering the life of the said child.

"Rahut No. 27, with mutilation, in having with a razor forcibly cut off the genital organs of the child, aged about eight or nine years called Buddhuah *alias* Moradun, thereby endangering the life of the said child, and also of making the child above named a Eunuch.

"Elanchee No. 28, Heyat Bux No. 29, Goolrung No. 30, and Ellahee Jan No. 31, as accomplices and Gouree No. 32, for being an accessary before and after the fact.

"We would acquit Atha Hossein No. 33, for want of proof of guilt, and not on clear proof of innocence."

In this finding I quite concur and the prisoner Atha Hossein has been accordingly acquitted. The necessity for the present reference, however, arises out of the singular peculiarities of the case. Firstly, the prisoner Edun stands convicted of sodomy in the accompanying trial, and in any case the consolidated sentence to be passed on him would be beyond my powers. Next, I consider it my duty to place these trials prominently before superior authorities. The evils they dis-

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cover, are like other class-crimes peculiar to the country, uncontrollable except by special remedies. No extravagant tyranny is too gross to be endured by native society, as long as the actors cunningly band themselves together for such purposes, under a mask, however, flimsy, turning customs into screens for whatever may be most vile, in the present degraded state of native society, and in course of time progressing onward from bad to worse, to which even the otherwise ungovernable caste-barrier gives way, and troops of Hindoo children under the guise of slaves or Eunuchs become Mahomedans. Hence, Eunuchs no longer domestics have formed themselves into trained bands of sturdy beggars, singers, dancers and sodomites, spreading and keeping up their vices throughout the country. The number apprehended by Mr. Toogood in so small and comparatively poor a district as Monghyr, is something remarkable, and proves that instead of its being one of the many social evils which still besets India, and is expected in course of time to die out a natural death, under the tolerant British Government, it is rather one thoroughly vivified by such very tolerance itself, towards creatures also, whose proclaimed pursuits degrade the very idea of tolerance towards them. It is vain to suppose that private prosecutions can ever reach such evils. It would be just as reasonable to expect, that the helpless infant slave victims, throughout the country, under such a system, replenishing and swelling the ranks of this peculiar Eunuch class, should exercise a discretion in the matter, and resist or complain against their oppressors. The duty plainly rests with the ruling authority, and was evidently so originally considered, though it has been so well kept out of sight, as to have lost all life with its first expression. I am not aware of the prosecution and punishment of any case of mutilation by Eunuch-making, than is recorded at page 17, volume III of Nizamut Adawlut Reports in which a prisoner on the 31st March, 1827, convicted of castrating a boy with his own consent from which operation death ensued, was sentenced to imprisonment for two years. With all due deference I am unable to take this precedent for my guidance. This solitary one during so long a course of years does not meet the prevailing enormity of the offence now, more rampant than ever in 1858, and likely to continue on the increase as long as this singular class of vagabond Eunuchs are allowed to follow their evil courses, and which might be so easily and quietly prevented. How inappropriate such results are in face of the orders of 1796, Circular Order, Nizamut Adawlut, No. 4, 27th April, 1796, page 2, edition 1829, which declared castration of slaves punishable by the Mahomedan law, and directed Circular Notification to all police officers who were enjoined "to apprehend all persons charged with the crime in question, in like manner as they are directed to apprehend persons charged

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with other crimes of a heinous nature, that if there appear sufficient grounds for the same, they may be brought to trial before the Court of Circuit, and to exemplary punishment as the law directs'' and again repeated Circular Order Nizamut Adawlut, No. 192, 1st of December, 1817, page 163, edition 1829, extending the notification to the ceded and conquered provinces including Cuttack. Carrau's edition terms the first Circular Order "obsolete" with reference to Act V. of 1843," and the other "temporary." This summary disposal of these authorities is an unfortunate one, though singularly sarcastic of the real state of things. It is not that the crimes of domestic slavery, and castration have become obsolete, but their correction in the slightest degree whatever. Many Christian residents of India have supposed both domestic slavery and Eunuchism in India to be obsolete, or disappearing, whereas, both and the latter in its singular class, more correctly Eunuch vagabondry, are more common at their very doors in 1858, under a British Government, than they were when Christians could not have safely resided in the country under a Mahomedan one. I can only account for such a strange state of things in this strange country from the fact, that the executive or police appointments, in all the influential grades have always been monopolized by at least two-thirds Mahomedans. Domestic slavery and domestic Eunuchism were engrafted on Hindoo customs by their Mahomedan oppressors, who were not likely to become the ready agents in carrying out the notification of 1796, in direct opposition to their own governing habits and practices. What they could not openly countenance they have winked at. Hence the numberless instances in which the police have become parties to domestic slave transactions, as would doubtless have been found out to be the case in Eunuch ones, had they ever been honestly prosecuted according to the notification of 1796 which, if it has hitherto remained a dead letter for want of prosecution, cannot now continue dormant any longer, when at last directly challenged to exertion by the present trial. This authority prescribes exemplary punishment in such cases, and nothing else will restrain such crimes. If deemed essential in 1796 it becomes still more requisite after more than half a century's progressive neglect down to 1858. I can only punish for the mutilation by such complete and dangerous emasculation under the general regulations, which on the view aforetaken, seem to me altogether inadequate to the offence, and thus completes the necessity for the present reference.

In concurrence with the assessor's finding I would sentence Edun prisoner No. 26 to fourteen years and convicted in the separate and accompanying trial* of Sodomy to seven years or a consolidated sentence of twenty-one years.

Rahut prisoner No. 27 to 14 years, Elanchee prisoner No. 28,

* Not printed.

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Heyat Bux prisoner No. 29, Goolrung prisoner No. 30, and Elahee Jan prisoner No. 31, to seven (7) years each.

Gouree prisoner No. 32, to five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor and H. V. Bayley.) The prisoner No. 26, Edun is charged with:

I. Purchasing a child of 8 or 9 years for 3 Rs. and a piece of cloth.

II. Purchasing the above child with the object of mutilating him.

III. Being a principal in making the child a Eunuch, and so endangering its life.

The prisoner No. 27 is charged with having mutilated the above child, by cutting off his genital organs forcibly with a razor and so endangering his life.

IV. Making the above child a Eunuch.

Prisoner No. 28, Elachee,
„ „ 29, Heyut,
„ „ 30, Goolrung,
„ „ 31, Elahee Jan,
„ „ 32, Gouree,

with being accomplices and prisoners Nos. 31 and 32, with being accessaries before and after the fact.

The 1st and 2nd counts against the prisoner No. 26 need not be entered into, for the offences charged being misdemeanors only, do not constitute a crime which the Magistrate can by law, take up without a complaint, i. e. otherwise than on a private prosecution.

The remaining count against all the prisoners is, the being accomplices to a greater or less extent in the mutilation by castration of the child Buddhuah.

This crime is recognized by both the common and statute Law of England; by the former under the name of Mayhem by castration; and by the latter under that of cutting with intent to main or disable or do some grievous bodily harm; and by both, the crime is considered a felony.

In strict accordance with that law, this Court followed the answers of fifteen law officers, declared in the Circular Order* of

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* It having been represented to the Court of Nizamut Adawlut, that a practice has prevailed, of purchasing young slaves for the purpose of making Eunuchs of them, to be afterwards again disposed of by sale, the Court have thought it proper to ascertain from their law officers whether this inhuman practice be duly punishable by the Mahomedan law, and also whether in any case, it would entitle the party injured to emancipation from slavery.

By the answers of the law officers to the reference made to them on these heads it appears, that the right of mastership over his slave, is not forfeited by making such slave an Eunuch, either under the Mussulman or Hindoo law; but that the castration of any person, whether a slave or

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the 27th April, 1796, that the castration of any party, whether slave or free, is a heinous offence under Mahomedan Law; and the police were further directed to apprehend persons charged with the crime in question, in the same manner as they would apprehend persons charged with other crimes of a heinous nature; in order that, if there appeared sufficient grounds for the same they might be brought to trial before the Court of Circuit and to exemplary punishment as the law directs.

It is true that this Circular Order is omitted in the last edition of Circular Orders (J. Carrau, Octavo edition 1855) and the cause of omission given in the appendix to that work, is that it had become *obsolete*, by reason of Act V. of 1843. This is clearly an error; for by Section 4 of that law, it is enacted that any act which would be a heinous offence if done to a free man, would be equally an offence if done to any person on the pretext of his being in a condition of slavery. It is clear then, that if this offence had been only punishable by Mahomedan Law, if done against a freeman, Act 5 of 1843, would make it punishable, if done against any person whatsoever. But the Mahomedan law as ruled by the Court in the Circular Order above cited, declares that it is a crime if committed against any person whatever. It follows that Act V. of 1843, has no bearing whatever upon the subject before the Court. Acting then upon the law as laid down by the Court, it remains for us to declare whether the crime charged is brought home to the prisoners.

The evidence on these charges against the prisoners is that of the boy Buddhuah *alias* Moradun, which there is no reason to distrust, and that of witnesses Nos. 1, 2, 3, 4 and 5. The boy Buddhuah deposed that prisoner No. 26 purchased him from his father Nainsookh of Patna, in the Burra Bazar of Monghyr; that some months after he was taken to the house of Elahee Jan, prisoner No. 31, where the Eunuchs were assembled; that Rahut prisoner No. 27, cut off his genital organs with a razor

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otherwise, is held criminal and punishable by the Mahomedan law; particularly if the offender be proved to have made it his professional or frequent practice; nor will the consent of the party be allowed to obviate the punishment; which, in all cases, is left to the discretion of the Governor of the country, or his represenaative, and to be proportioned to the magnitude of the offence.

With a view to discourage and prevent, as much as possible, the cruel and detestable practice above adverted to, the Court desire you will make public the foregoing provision of the Mahomedan law against it, by a circular notification to the police officers under your jurisdiction; and that you will enjoin them to apprehend all persons charged with the crime in question, in like manner as they are directed to apprehend persons charged with other crimes of a heinous nature; that, if there appear sufficient grounds for the same, they may be brought to trial before the court of circuit, and to exemplary punishment as the law directs.

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while Elahee prisoner No. 28, held his legs and arms; that at the time this was done, Heyut prisoner No. 29, Gulrung prisoner No. 30, Elahee Jan prisoner No. 31, and Gouree prisoner No. 32, were present; and that the last named rubbed his feet after the operation. But the boy did not in his deposition to the Magistrate, mention Gouree prisoner No. 32, amongst those actually present at the operation.

Witnesses Nos. 1, 2, 3, 4 and 5, corroborated the deposition of Buddhuah, as to the meeting of the Eunuchs on the day in question, and as to Buddhuah having been brought to Elahee Jan's house by Edun prisoner No. 26, on that occasion; and to his having then been made an Eunuch, though they were not actually present at the operation.

Witness No. 2, the brother of Buddhuah, was purchased by Edun prisoner No. 26, from the father, Nainsook, at the same time as Buddhuah; and was also taken at the same time to the house of Elahee Jan, with a view to being made a Eunuch also; but on remonstrating, he was not made one; as the Sessions Judge suggests, because his age (about 12 years) might render the operation more dangerous.

We cannot find the evidence of Dr. Duka the Civil Surgeon entered in the Calendar, or on the record. His deposition should have been taken both by the Magistrate and Sessions Judge; although in this instance the charges are proved independently of it. Dr. Duka's official letter of the 24th July 1858, No. 26, which strictly speaking is no evidence, and consequently has not been looked upon as such by us, shews that the boy Buddhuah had *all* the genital organs cut off, smooth and even, as by a sharp instrument, leaving only an orifice, connected with the bladder.

He also reports that on examining four of the prisoners he found exactly the same appearance in them.

The prisoners before us set up no defence, and call no witnesses. But the evidence of the boy, Buddhuah, and of witnesses Nos. 4 and 5, makes it doubtful whether Gouree prisoner No. 32, took any part in the matter, though he came with Heyut prisoner No. 27, to the place of meeting. We give him the benefit of this doubt, and acquit him.

On the evidence above stated we find the remaining prisoners guilty of the castration of Budduah; Edun No. 26, as a principal, and the others, viz. prisoners Nos. 27, 28, 29, 30 and 31, as accomplices; and we sentence them as follows, *Edun No. 26*, to seven years' imprisonment with labor and irons, which sentence will commence on the expiration of that of seven years for sodomy (vide our separate judgment dated the 10th instant, yesterday,) on his trial upon that distinct and separate charge.

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Rahut No. 27, } To five years with labor and irons.
Elanchee No. 28, }

Heyut No. 29, } to three years with labor commutable
Goolrung No. 30, } to a fine of 30 Rupees each, payable
and Elahee Jan No. 31, } within 15 days.

The subject of the letter of the Magistrate to the Sessions Judge, copy of which the latter has submitted, has, we observe, been brought to the notice of the Executive Government and requires therefore no remarks from us.

The Sessions Judge should make his own letters of reference less discursive; and lay before this Court more lucidly and succinctly the precise evidence bearing on the guilt of each of the several prisoners before him, and the distinct conclusions he draws from the material portions of that evidence.

PRESENT:

D. I. MONEY, ESQ., *Officiating Judge.*

GOVERNMENT AND ANOTHER

versus

BHUBO BAGDINEE.

Hooghly.

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Case of
BHUBO
BAGDINEE.

The intent to kill could not be justly inferred from all the circumstances of the case. The wound according to the medical evidence, was a slight and superficial one on the shoulder, and was more probably an accidental consequence on an attempt to rob the prosecutrix of her

CRIME CHARGED.—Wounding with intent to kill Deno Bewah Kushbee.

CRIME ESTABLISHED.—Wounding with intent to commit murder.

Committing Officer.—Mr. H. Pratt, Officiating Magistrate of Hooghly.

Tried before Mr. E. Jackson, Officiating Additional Sessions Judge of Hooghly, on the 26th August, 1858.

Remarks by the Officiating Additional Sessions Judge.—The prisoner pleads *not guilty.*

The prosecutrix Deno Bewah, deposes that the prisoner was an old acquaintance of hers when both lived at Chandernagore: they are both prostitutes. About four years ago the prosecutrix came to reside at Bhudresshur. On the 28th March, the prisoner came to her, said she was in great difficulties and asked to be permitted to remain in her house. This was granted on the 30th March; in the middle of the day both women went to sleep after their usual bath and meal, on the same bedding and on the same pillow. Shortly after, the prosecutrix awoke and found the prisoner standing over her with one foot on her body and knife in her hand, with which she had inflicted a wound just above her shoulder-blade; she cried out, seized the prisoner by the hair of the head, and held her down by it until assistance

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ornaments. The intention of the prisoner must be judged of from her own conduct, the situation of the parties, the extent of the wounds and the means employed to effect it.

Held that in endeavouring to ascertain the prisoner's real intention, it is of as much importance to consider the nature of the injury inflicted as the instrument employed.

Prisoner convicted of assault and wounding and sentenced to six months' imprisonment with labor.

came, when she opened the door with her left hand, and made the prisoner over to Madhub Chowkeedar. She states that they had had no quarrel; that she can conceive no other reason for the attack than a wish to take possession of the ornaments which she was wearing at the time. The knife produced in Court belongs to her and had been used at the morning meal in cutting fruit, and had been placed on a box close at hand, before they went to sleep.

Witnesses Nos. 1, 2 and 3, all bear out the above statement, deposing that they were attracted by the cries of the prosecutrix "that she was being murdered;" that they ran to the house; found the door locked from inside; that the prosecutrix opened it with her left hand, having hold of the prisoner by the hair with the right hand; that they saw she was bleeding from a wound on the shoulder (they call it the throat) and her clothes and the bed clothes were bloody, and the knife was lying on the bed clothes.

Dr. Bray deposes that the wound was a slight and superficial one, such as might have been caused by the knife in Court. There was no danger to life from it.

The remaining witnesses do not give material evidence.

The prisoner, in her defence before the Magistrate, urged that the wound was inflicted by some one who entered from outside. In this Court she urges that the charge as brought against her was an after-thought of the chowkeedar, witness No. 1, and that she is implicated from motives of jealousy by the prosecutrix.

I am of opinion that the prisoner's guilt is clearly proved, and that she was in the act of committing a most cold-blooded, deliberate, cruel murder on her benefactress who had taken her into her house and relieved her in her difficulties, when through some accident in accomplishing the crime, the prosecutrix awoke and saved herself. The prisoner inflicted the wound on the shoulder instead of the throat either from nervousness in carrying out the crime or from some slip or accident. The slightness of the wound bears but little weight with me in the sentence I pass. A very slight wound in the throat would have caused instant death. Had the prosecutrix not awoke she would in another few seconds have been a corpse. I sentence the prisoner to fourteen years' imprisonment with labor suited to her sex.

The law officer concurred in the conviction.

Remarks by the Nizamut Adawlut.—(Present: Mr. D. I. Money.) After most carefully weighing the whole evidence in this case, I do not think it is sufficient to convict the prisoner of wounding with intent to kill.

There was no eye-witness to the deed. It was committed in the middle of the day. There was no enmity or quarrel between the parties. There was no provocation. The hut in which they

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lodged was surrounded by other huts. It is clear that the wound was inflicted by the prisoner, but it is impossible under the circumstances to believe, that she designed to take the life of the prosecutrix in order to rob her of her ornaments. The medical evidence shows that the wound was on the *shoulder*, slight and superficial. The prosecutrix herself states that the prisoner *threatened* her life when she was roused from her sleep by the injury inflicted. The intention of the prisoner must be judged of from her own conduct, the situation of the parties, the extent of the wound, and the means employed to effect her object. If the act was such, that, but for the intervention of Providence, it would have produced fatal effects, and that consequently the prosecutrix has run the hazard of her life, the prisoner's intention must be judged of, as if the full consequences had ensued. There is nothing in the attendant circumstances of the case, from which a *mortal* intent may be justly inferred. It cannot be said, from mere surmise, that the slight wound on the shoulder was an accident, and was intended for a fatal cut across the neck. In endeavouring to ascertain the prisoner's real intention, it is surely of as much importance to consider the nature of the injury inflicted, as the instrument employed, inasmuch as we can only estimate the motive by the manner in which the act was committed, and the means used in its commission. The superficial wound on the shoulder is no indication of a criminal intention; and we must look therefore to all the other circumstances, from which such an intention can be clearly and distinctly inferred. There are none whatever. It is more probable, I think, looking at all the circumstances, that the prisoner used the knife to take off the ornaments from the person of the prosecutrix, if such was her *ultimate* object, as the prosecutrix suspected, and that in the attempt the wound accidentally occurred, than that to obtain such an end, at such a time, and in such a place, without any provocation whatever, the prisoner should seek *first* to deprive the prosecutrix of life, and was prevented only by the knife, from whatever cause, *mis-striking* the shoulder instead of the neck, and inflicting a superficial instead of a fatal wound. Looking at the case in this light, there appears to me to be an entire failure of proof of such criminal intention as that of which the prisoner has been convicted. All that is proved by the evidence is an assault and a simple wound; for which, reversing the order of the Sessions Judge, I would sentence the prisoner to six months' imprisonment with labour suited to her sex.

PRESENT:

J. H. PATTON AND A. SCONCE, ESQS., *Judges* AND C. B. TREVOR, AND H. V. BAYLEY, ESQS., *Officiating Judges.*

GOVERNMENT AND KULMUZA BEBEE

versus

KOSSIMOODHIN SHEIKH.

Jessore.

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Case of KOSSIMOODHIN SHEIKH.

Prisoner convicted on strong presumption, derived from circumstantial evidence, of wilful murder, and sentenced to be imprisoned in transportation for life.

In order to justify the inference of legal guilt from circumstantial evidence, it is not necessary that the facts proved should be *absolutely inconsistent* with the prisoner's innocence, but it is sufficient if the evidence against the accused be such as to exclude to a *moral certainty*, every hypothesis but that of his guilt of the offence imputed to him.

CRIME CHARGED.—Wilful murder of Torikoollah Sheikh, husband of the prosecutrix, on the 20th of July, 1858, corresponding with the 6th of Sravan, 1265, B. S.

Committing Officer.—Mr. E. W. Molony, Magistrate of Jessore.

Tried before Mr. W. S. Seton-Karr, Officiating Sessions Judge of Jessore, on the 10th November, 1858.

Remarks by the Officiating Sessions Judge.—The prosecutrix, a very reluctant witness, deposed in this Court, that she was informed by some one that her husband had been taken away by an alligator. Afterwards, she admitted that the informant was the prisoner, and that he had once made advances to her, which she had rejected. She was staying in her father's house at the time, whither she had been removed because her husband was living with a brother-in-law, and the prosecutrix could not agree with this person's wife, her own sister. This and other particulars of the family are to be found in the evidence of No. 12, Hisabdi Sheikh, father of the prosecutrix.

The facts of the case are contained in the evidence of witnesses Nos. 1 to 4. These men depose that about 8 o'clock or so, on the night of the 6th of Sravan, they heard the prisoner shouting out that deceased had been taken away by an alligator: that on going towards him they found him with a thick stick in his hand and with his clothes wet: and that the prisoner who seemed somewhat excited, took them and pointed out the *ghaut* whence the alligator had taken away the deceased as he was filling his *hookah* with water. The prisoner was at some distance from the river when they saw him. Witnesses Nos. 1 and 4, had their suspicions then, as they were aware of the prisoner's intriguing with the wife of the deceased, but they said nothing at the time.

The next day witness No. 1, saw the corpse of the deceased floating by the river side, and gave information at the thannah, which was only two miles off, at once. As the body when found disclosed marks of beating, and none of alligators, the prisoner was arrested immediately.

Witnesses Nos. 8 and 9, saw the deceased and the prisoner going along towards the river together about nightfall, the previous day.

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Witnesses Nos. 10 and 11, corroborate the statement as to the marks of beating, and No. 11, was aware of the intrigue, as the prisoner's mother talked of it every where. I do not, however, attach much weight to a statement made by witness No. 1, to the effect that the prisoner's mother had said that if the deceased were to die, her son might marry the widow.

The evidence of the Civil Surgeon as to the marks on the corpse is, clearly, of great importance. His deposition shows, that the marks were those of beating, probably of a stick or blunt instrument, on the neck, occiput, and right shoulder. Though not of themselves sufficient to cause death, they were, to the best of this witnesses belief, *not* caused by an alligator, but were such as might stun any one. No internal examination could be attempted.

The defence of the prisoner is a total denial of his having called out in the manner described, and he brings witnesses to prove that he has a quarrel with Lal Mahomed, witness No 1, and that they do not eat together or invite each other to feasts. But these witnesses, two of them being nearly related to the prisoner, do not state that there is any thing serious in the quarrel. An attempt at an *alibi* on the night in question entirely broke down.

The Jury found the prisoner *guilty*.

I agree with them. The allegation of a misunderstanding owing to which the prisoner and *one* witness do not eat together, is quite insufficient to induce a belief that the case is got up. The evidence of the other witnesses, as detailed above, is clear and consistent. Information was given at the thannah immediately. Not a shade of suspicion is raised against any other person as the murderer. Not a word was said about enmity with Lal Mahomed either before the police or before the Deputy Magistrate. And it was not until the day of committal that the prisoner bethought himself of any such defence at all. Had there been any real enmity, the prisoner would, surely, have urged it on the very earliest opportunity. Besides, there is no allegation of any misunderstanding with the other witnesses, except No. 1, and the fact of the intrigue is notorious, and is admitted to a certain length, by the widow of the deceased False cases, too, are not got up suddenly in this way. Men tutored to support a charge of murder, would have said that they heard screams from the deceased, or the noise of two men quarrelling or struggling. They say nothing of the kind.

Taking, then, the evidence for the prosecution to be authentic and truthful beyond question, I proceed to consider how it bears out the charge. In the first place, had an alligator really carried away the deceased at night, the chances were ten to one that the body would not have floated the next day. Next, the

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evidence to the examination of the corpse when found, especially the medical evidence, renders the version of the alligator quite incredible. Looking at the place where the injuries were inflicted, it is difficult to imagine any position in which the deceased could have been for an alligator so to catch him. An alligator seizing a man washing or taking water at a *ghaut*, would seize him by the lower or middle part of his person. And lastly, if the prisoner and the deceased had any words together and the prisoner struck the deceased, or if he struck him unawares from behind, taking him at a disadvantage, the deceased might be stunned and fall into the stream, without uttering an audible cry.

What passed on the occasion, can of course, only be guessed at. There is, however, no positive evidence to prove that the prisoner decoyed the deceased away in order to murder him, and under all the circumstances, the evidence amounting to violent presumption against the prisoner, I am not prepared to recommend a capital sentence. I recommend, however, that the prisoner be transported beyond seas for life, with imprisonment and hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton, A. Sconce, C. B. Trevor and H. V. Bayley.)

Mr. J. H. Patton.—The circumstances, which are taken to tell mostly against the prisoner are, that he was seen in company with the deceased on the day of the alleged murder; and that the deceased did not meet with his death by being carried away by an alligator, as asserted by the prisoner, when he raised the hue and cry and brought together the neighbours on the night in question. These coupled with the fact that the injuries apparent on the body of the deceased, when discovered floating the next day, are declared to have been inflicted in all probability by a blunt instrument, without doubt, raise a presumption that he had come to his death by violence.

I do not lay much stress, however, on the evidence in regard to the first point. Two persons depose that they saw the prisoner and deceased walking together on a certain day in Sravun, after which they never saw deceased again; but they also say that they were going along conversing in a friendly familiar way, and disagree in the important matter as to whether the prisoner was, or was not, armed with a heavy *latee* at the time.

The circumstance of the prisoner giving the false alarm regarding deceased's death, taken in connection with the fact of his intrigue with deceased's wife, is without question very suspicious; and that suspicion might have gone far to create a presumption of the prisoner's guilt, had he been questioned as to the cause of his clothes being wet on the night of the occur-

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rence, and been unable to account satisfactorily for the circumstance; but the record of the trial is silent on this point.

There is no direct proof whatever in this case. None to show the nature of the violence used against the deceased, and none to connect the prisoner with the commission of that violence. All the evidence is presumptive and conjectural and the medical testimony moreover, does not disclose the cause of death; while it distinctly sets forth that the injuries exhibited on the body of the deceased were not sufficient in themselves to produce a fatal result.

Entertaining the above view of the evidence recorded against the prisoner, I would acquit him.

Mr. H. V. Bayley.—Witnesses Nos. 8 and 9, prove that on the evening of the 9th or 20th July, 5th or 6th Sravun, prisoner and deceased were seen by them going together along the bank of the river. Witnesses Nos. 1, 2, 3 and 4, prove that later in the evening, prisoner called out that an alligator had taken off deceased, and prisoner showed the place, where it had done so, while deceased was putting water into his *hookah*. Witness No. 12, the father-in-law of deceased, proved, that on the morning of the 21st July, the prisoner came to him and told him, deceased had been taken off by an alligator, and requested witness to inform the police of that. Witnesses, Nos. 10 and 11, prove the finding of the body of the deceased, next day, 21st July, not above a *beegah* or so from the spot the prisoner had indicated the previous evening; and bruised; but with no sign of having been touched by an alligator. Dr. Eliot, witness No. 7, distinctly deposes an alligator had not attacked the body, and had not caused the death. Dr. Eliot stated there were bruises on the scalp, and behind the right ear, probably inflicted by a blunt instrument: also on the back part of the neck and over the occiput; also on the right shoulder and on the right side of the neck, where the blood was extravasated. Dr. Eliot says also, "these injuries were inflicted by a man using some weapon, or his fist or both" and adds, "they were done probably when the man was alive. They might stun a man *but were not sufficient to cause death.*" He could not examine the body internally, as it was much decomposed; and remarks that he "could not have told whether death resulted from drowning or suffocation."

This evidence I *cannot* consider to *afford sufficient proof of* prisoner's having committed wilful murder, i. e. of prisoner having attacked deceased with a *deliberate and malicious design to kill.* The presumption against the prisoner, which he has to rebut, arises from the facts, that he was seen with the prisoner that evening on the spot, at which prisoner said the deceased had been taken by an alligator; that it is proved deceased was not taken by an alligator; that prisoner had a *latee* and wet clothes; that the bruises might have been inflicted by a blunt

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instrument or some weapon, or the fist or both; and were numerous and sufficient to stun, though not of themselves to cause death. The violent presumption from *these* facts, which prisoner in no way rebuts, is not, in my opinion, beyond this, that he assaulted deceased in a manner, which led to deceased's death by culpable homicide; and of this I would convict him on such presumption; and sentence to seven years' imprisonment with labor and irons.

Mr. A. Sconce.—The prisoner Kossimmuddin Sheikh, is charged with the wilful murder of Turreekoollah Sheikh; and the Sessions Judge, in concurrence with the jury, upon violent presumption, finds the prisoner guilty. In this Court, Mr. Patton would acquit the prisoner; Mr. Bayley would convict of culpable homicide: and owing to this difference of opinion, the trial has been referred to me.

The evidence against the prisoner is entirely circumstantial. The deceased Turreekoollah, the prisoner, and all the witnesses belong to the village of Bagmara. Not long after dark, on the evening of the 6th Sravun, the witnesses, Lal Mahommed, Panjoo, Kadir, and Mungul, heard the prisoner call out that an alligator had carried off Turreekoollah. These witnesses immediately went up to the prisoner who pointed out the spot, at the river side, where he said Tureekollah, as he was filling his *hooka*, had been carried away. Here, according to the witness Kadir, the water was about two *haths* deep, but much deeper farther in. All the four witnesses say that the prisoner had a heavy club in his hand and that his clothes were wet.

A witness, Panchoo, says that as the day was closing, he saw the prisoner and the deceased walking together north, by the river side; the former carrying a *latee*, the latter a *hooka*. They passed about a *beegah* from him; and, about a "*dak*" as far as a man can call, from Kadir's house; that is, from the place where the first four witnesses first heard the prisoner cry. Afterwards (meaning the same night) this witness, Panchoo, heard that Turreekoollah had been carried off by an alligator.

Mokeem, like the last witness, speaks to seeing the deceased and prisoner going together north, by the river side, in the evening; and on the same night, he heard it reported that Turreekoollah was carried off by an alligator.

Essabdee, father-in-law of the prisoner, with whom his daughter, the wife of the prisoner, had been for some time living (in Nehalpoor) states that on the morning after the occurrence, prisoner came to him and told him that as he and Turreekoollah were walking together from their rice field the evening before, Turreekollah had gone to fill his *hooka* in the river, and was carried off by an alligator; accordingly prisoner asked witness to go with him to report the circumstance at the thannah; witness then went to Bagmara, and heard the body had been found.

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On the morning of the 7th Sravun, 21st July, the body of Turreekoollah was found floating in the river, about a *beegah*,* from the spot where the evening before prisoner said he had been carried away. The body was taken on shore. A mark of a violent blow was seen over the right ear. Prisoner was at once arrested on suspicion; and carried to the thannah, which was not far off. The Darogah at once proceeded to Bagmara and on that day and the following completed his investigation.

The first five witnesses above named were examined on the 21st July, Mokeem and Essabdee on the 22nd, and all gave to the Darogah, the information which in their depositions at the trial they have detailed.

Prisoner, all through the enquiry, has denied being in company with the deceased on the evening of his death. In his defence, he ascribes the occasion to a quarrel he had with Lal Mahommed, which quarrel, according to one of his witnesses, was caused by Lal Mahommed's nephew being married without consulting him. Prisoner also said that he had not left his own house from about forty minutes before sunset.

Such is the evidence brought against the prisoner; and I must say that this evidence appears to me to afford a very strong presumption that the prisoner did wilfully murder Turreekoollah, and to justify his conviction upon that charge. The depositions of the witnesses appear to me to be truly given. The prisoner was seen in company with the deceased just before and just after the murder. He volunteered an obviously false account of the cause of death of Turreekoollah. The latter, as shewn by the deposition of the Civil Surgeon had suffered great violence on the head and neck and shoulder. The prisoner just after the event was seen with a heavy club: and his clothes were freshly wet, as if, after murdering his victim, he cast him into the deeper part of the stream.

As recommended by the Sessions Judge, I would sentence the prisoner to be imprisoned in transportation for life.

The Magistrate's attention should be called to the erroneous date given in the calendar as that of the prisoner's apprehension; that is the 26th instead of the 21st July.

Mr. C. B. Trevor.—This case has been referred to me as a fourth judge, in consequence of a difference of opinion between my colleagues who have heard the case, as to the decision which should be arrived at upon it.

It appears from the evidence of the Civil Surgeon, that when he examined the body of the deceased man, Turreekoollah, it was so much decomposed that he was unable to make any internal examination of it, and consequently to state the cause of death; whether that arose by suffocation or not. The Civil

* See deposition of Lal Mahommed.

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Surgeon, however, reports as follows: "that there were bruises on the scalp and behind the right ear, probably inflicted by a blunt instrument; also on the back part of the neck and over the occiput; also on the right shoulder; and on the right side of the neck, where the blood was extravasated; there was also a superficial wound behind the right ear. These injuries were probably inflicted when the man was alive. They might have stunned a man, but were not sufficient to cause death. These wounds could not have been inflicted by a wild beast or alligator and no marks of fangs or teeth were on the body, neither was the skull fractured. To the best of my belief the injuries must have been inflicted by a man using some weapon, or his fist or both."

It would seem then the blows inflicted upon the deceased did not kill him. From the evidence, however, of witnesses Nos. 1, 3, 10 and 11, who depose to having found the corpse of the deceased on the day following his disappearance, and to there being no wounds, such as would be made by an alligator on his person, when taken together with that given by witnesses Nos. 1, 2, 3 and 4, detailed below, it is clear that the deceased must have met his death by drowning; and the point remaining for inquiry is, by whose instrumentality he came to his end; and of what crime has the person, who caused the death of the deceased, been guilty.

The evidence of the witnesses Nos. 1, 2, 3 and 4, taken first on the 21st July, the day after the occurrence, is clear and consistent throughout. They depose, that about an hour after nightfall, they heard the prisoner Kossimmoodin Sheikh, crying out that an alligator had taken away the deceased; that running up in the direction whence the voice proceeded they heard from the prisoner, who had a *lattee* in his hand and whose clothes were wet, that whilst the deceased was filling his *hookah* with water, at a spot pointed out by him, an alligator had carried deceased away. This evidence is to a certain extent corroborated by the depositions of witnesses Nos. 8 and 9, who saw the deceased and the prisoner in company together at evening time. The former witness says that deceased had in his hand his *hookah* and that the prisoner carried a *lattee*, whereas the latter is unable to state any thing on this head. Witness No. 12, the father-in-law of deceased, deposes that on the morning of the 21st July, the day after the deceased came to his end, the prisoner went and told them, that as he and the deceased were coming home from Jampsak an alligator had carried off Turreekoollah whilst he was filling his *hookah* with water, and that he had told the prisoner to give information of the fact to the police; and witnesses Nos. 1, 10 and 11, depose to the very general belief that an illicit intercourse existed between the prisoner and the wife of the deceased, which led to her removal to her father's house.

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The prisoner has throughout denied, having been with the deceased on the evening of his death, and having any knowledge, of the same; he pleads that the present accusation against him has been got up by the witnesses and prosecutrix, between whom there is an intimacy; and that on the day preceding that on which he was arrested, which was that on which Turreekoollah met with his death he was at his own house some time before nightfall.

The witnesses called by the prisoner state nothing material in his favor.

From the foregoing evidence then, it is proved either directly or presumptively that the deceased was last seen alive in company of the prisoner; that the prisoner on the night, and at the time at which deceased came to his end, asserted before witnesses that while he and the deceased were in company and whilst deceased was stooping down to the water to fill his *hookah* with water, an alligator carried him away; that this last statement is undeniably false, there being no mark on deceased's body, such as an alligator would have made; that there were marks on the back of the head, and neck of the deceased, of severe blows, that is exactly on the part of the body which a person armed with a stick as the prisoner was, if he struck at all would strike a person in the position in which the deceased was represented by the prisoner himself to have been, when carried off by the alligator; and that from the violence of the blows by which those marks were made, the deceased *might* have been stunned and that whether actually stunned or not, the deceased from the effect of the blow fell into the water and met his death by drowning.

In order to justify the inference of legal guilt from circumstantial evidence, it is not necessary that the facts proved should be *absolutely inconsistent* with the prisoner's innocence, but it is sufficient if the evidence against the accused be such as to exclude to a *moral certainty* every hypothesis but that of his guilt of the offence imputed to him. Keeping this principle in view and looking to the facts proved taken together, there seems to me no legal difficulty in inferring that the blows of which the marks remained on the body of the deceased were inflicted by the prisoner at the bar; and it only remains, to determine on the same principle, the crime, of which the prisoner has been guilty.

The deceased, it appears from the evidence, was in a defenceless position, and the blows were inflicted on the hind part of his head and body, whilst in that position; and they, whether they actually stunned him first or not, caused him *necessarily* and inevitably to fall into the river which was sufficiently deep to drown him, no effort being made to save him; but a wretched falsehood being trumped up to account for his disappearance. These facts taken together, seem to me,

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irrespective of ulterior motives, to indicate a deliberate intention on the part of the prisoner to murder the deceased and to exclude to a moral certainty any other hypothesis. I would therefore convict him on strong presumption, of the wilful murder of the deceased, Turreekoollah; and, as recommended by the Sessions Judge and my colleague, Mr. Sconce, I would, under the circumstances of the case, sentence him to imprisonment for life, in transportation beyond sea.

SUMMARY CASE.

DECEMBER,

1858.

SUMMARY CASE.

DECEMBER 1858.

PRESENT:

B. J. COLVIN, Esq., *Judge.*

No. 92 OF 1858, MISCELLANEOUS NIZAMUT.

MR. H. D. TRIPP AND ANOTHER, PETITIONERS,

versus

BUSTEELOLL GOSSAIN,—OPPOSITE PARTY.

VAKEELS OF PETITIONERS,—MR. R. T. ALLAN, AND BABOO HURKALLY GHOSE.

Nuddea.

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Case of H. D. TRIPP and another.

In criminal cases the cost of mooktear's fees ought not to be a charge upon the party cast.

Petitioners, defendants in a criminal case, were convicted and sentenced to punishment. They were also ordered to pay the prosecutor's costs by Section 8, Regulation XIV. 1797. One item of costs charged against them is 45 Rupees for expenses of a mooktear for three months; and the appellants desire to be relieved from the payment of this item, as not legally leviable from them. I do not find that there is any precedent applicable to this case; that is to say, involving the question whether in criminal cases mooktear's fees may be charged amongst the costs; although on the 20th January, 1857, in the case of Bishunath Sirkar, petitioner, the Court (present Messrs. Loch and Bayley) disallowed counsel's fees. I am of opinion that mooktear's fees should be equally disallowed in costs in criminal cases. I think that Regulation XIV. 1797 only contemplates the costs patent on the record, and there is no law regulating the scale of mooktear's fees, as there is for that of pleader's fees in civil suits; so that if the item were sanctioned it would only be at an arbitrary rate. I also observe in this case that both prosecutor and mooktears were present conducting it at the same time. This was unnecessary and therefore the expense for mooktears was one voluntarily incurred by the prosecutors. Moreover Construction No. 371, would seem to imply that mooktear's fees were to be adjusted between them and their employers, and not to be recoverable from the opposite party. For these reasons, I reverse the orders of the lower Courts as regards the mooktear's costs, and direct that the sum of 45 Rupees if levied, be returned to petitioners.